

1576

R E A D I N G S

U P O N T H E

**Statute Law,**

ALPHABETICALLY DIGESTED.

Wherein the  
Most Obscure and Difficult Points

Are Clear'd up and Illustrated by

**Resolutions and adjudg'd Cases,**

Taken from the

Best A U T H O R I T I E S Extant.

---

V O L. IV.

---

By a GENTLEMAN of the *Middle-Temple*.

---

L O N D O N :

Printed for the Author ; and are to be sold by  
D.BROWN, T.OSBORN, W.MEARS, and F.CLAY.  
M.DCC.XXV.

114



READING

UPON THE

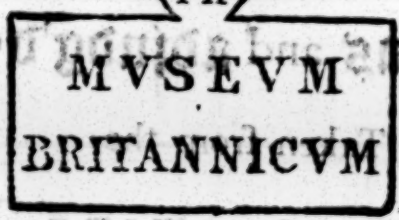
Statute Law

ALPHABETICALLY DIGESTED

Wherein the

Most Obscure and Difficult Points

Are Clearly Explained by



Authorities and Cases

Best Authorities Examined

VOL. IV.

By a Gentleman of the Middle Temple

LONDON:

Printed for the Author, and are to be sold by  
D. Browne, T. Gower, W. Mearns, and J. Galt  
ADCCCLXXV



# READINGS

UPON THE

## Statute LAW.

---

VOL. IV.

---

Incumbent.



FORASMUCH as a Church-Yard <sup>35 Ed. 1.</sup> that is dedicated is the Soil of a Church, and whatever is planted belongeth to the Soil, it follows that Trees growing in the Church-Yard are to be reckon'd among the Goods of the Church, which Laymen have no Authority to dispose of. Yet seeing those Trees are often planted to defend the Church from the Force of the Wind, we do prohibit Parsons to fell them down unadvisedly, but when the Chancel doth want Repairs; neither shall they be converted to any other Use except the Church wants Repairing. In which Case

The Incumbent shall not fell the Trees in the Church Yard but for the Repairs of the Chancel.

the Parsons would do well to relieve the Parishioners by bestowing such Trees upon them, which we will not command, but commend if it is done. *Stat. ne Rector proster- nat Arbores in Camiterio.* 35 Ed. 1.

9 E. 2. c. 8. Clerks which are employ'd in the King's Service, du-  
Clerks in the ring such time as they are in Service shall not be compell'd  
King's Service to keep Residence at their Benefices. *Stat. 9 Ed. 2. c. 8.*  
may be Non- The Examination of the Ability of a Parson presented  
Resident. to a Benefice belongeth to the Spiritual Judge. 9 Ed. 2.  
9 Ed. 2. c. 13 c. 13.

Examination Whereas complaint is made that Priests and Clerks and  
of Clerks. other Persons of Holy Church while they attend Divine  
50 Ed. 3. c. 5. Service in Churches and Church-Yards, and other Places  
No Priests to dedicated to God, are taken and arrested, the King com-  
be arrested in mands upon grievous Forfeiture that none do the same  
Churches or from henceforth, so that Collusion or feign'd Cause be not  
Churchyards. found in any of the Persons of Holy Church in this be-  
1 R. 2. c. 15. half. *Stat. 50 Ed. 3. c. 5.*

On pain of Because Prelates do complain that as well benefic'd  
being fin'd People of Holy Church as others be arrested and drawn  
and impris- out of Churches and Church-Yards, and sometimes when  
soned making they attend Divine Service: It is ordain'd that if any Mi-  
satisfaction to nister of the King or other do arrest any Person of Holy  
the party Church in such manner, he shall be imprison'd, and ran-  
griev'd som'd at the King's Will, and make gree to the Party so  
Provided they arrested. *Stat. 1 R. 2. c. 15.*

are not de- Provided that the said People of Holy Church shall  
tain'd there not hold them within the Churches or Sanctuaries by  
by fraud or fraud or collusion in any manner. *Ibid.*  
collusion.

13 R. 2. c. 1. If the King present to a Benefice that is full of an In-  
Incumbent cumbent, the King's Presentee shall not be receiv'd by the  
Ordinary to the Benefice until the King hath recover'd his  
not to be c- Presentment by Process of Law. *Stat. 13 R. 2. c. 1.*  
victed by the If any Incumbent be put out of his Benefice by the  
King's Presen- King's Presentee without due Process of Law, such In-  
tee but by Law cumbent is at Liberty to sue for his Remedy at what time  
4 H. 4. c. 22. he shall think fit. *Stat. 4 H. 4. c. 22.*

Ineumbent No Parson, Vicar, Curate, or Parish-Priest, or any o-  
griev'd may ther Spiritual Person, or their Farmers or Lessees shall  
sue for his take or demand of any Person for any Person dying, any  
Right at any Mortuary or Corse, Present, or any Sum of Money or o-  
time. ther Thing for the same more than is hereafter men-  
21 H. 8. c. 6. tion'd, nor shall convent any Person before any Judge  
Pain of de- Spiritual for the Recovery thereof, on pain of forfeiting  
manding any the Value of what they shall take or demand above the  
other Mor- Sum limited by this Act, and also 40 s. to the party  
tuary than is griev'd. *Stat. 21 H. 8. c. 6.*  
allow'd by  
this Act.

And



And it is ordain'd, That no Mortuary shall be taken or No Mortuary demanded of any Person who at the time of his Death where the had not in movable Goods the Value of Ten Marks; and Goods of the that no Mortuary shall be demanded of any Person but in Deceas'd do such places where Mortuaries have us'd to have been paid. not amount to Nor shall any Person pay Mortuaries in more places than Ten Marks. one, and that in the place of their most usual Abode, Or where and there but one Mortuary. And no Parson, &c. shall Mortuaries for any Person dying who had above the Value of Ten are not us'd. Marks in movable Goods after his Debts paid, and under to be paid. the Value of 30 l. take for a Mortuary above 3 s. 4 d. Where to be and for a Person having under the Value of 40 l. 6 s. paid. 8 d. or for any Person having Goods above the Value of The Sum to 40 l. above 10 s. *Ibid.* be paid.

Provided that for no Woman Covert or Child, or any To be paid Person not keeping House, no Mortuary shall be paid, nor for none but for any Wayfaring Man or person who did not dwell in House-Keep- the Parish where he dy'd, but such Mortuary shall be paid ers. in the place of his most usual Abode. *Ibid.* Incumbent

Provided that it shall be lawful for any Parson, &c. to may take receive any Sum of Money or other Thing which by any Things be- Person dying shall be bequeath'd to them or to the Church. queath'd to *Ibid.* his Church.

Provided that in such places where Mortuaries have No greater been of less Value than as aforesaid, no Person shall pay Sums to be any more for a Mortuary than has been accustom'd. paid than cus- *Ibid.* tomary.

For the better Maintenance of Divince Service, preach- 21 H. 8. c. 13. ing and reaching the Word of God, good Example, Main- No Clerks to tenance of Hospitality, Relief of the Poor, and good O- take a Farm. pinion of the Laity towards Spiritual Persons, it is enacted, That no Spiritual Persons Secular or Regular, shall take to farm any Lands or Tenements for Term of Life, Term On pain of of Years, or at Will, on pain of 10 l. for every Month 10 l. per he shall occupy such Farm, to be divided between the Month. Crown and the Prosecutor. *Stat. 21 H. 8. c. 13.*

And all such Leases to be made to any such Spiritual And the Lea- Persons, or to any other to their Use, for Term of Life ses to be void. or Years, shall be void.

Provided that this Act shall not extend to any Spiritual Not to extend Persons for taking to Farm any Temporalities during the to the farm- Vacation of any Bishoprick, Abbey, Priory, or other ing the Tem- Collegiate, Cathedral or Conventual Church, nor to any poralties of Spiritual Person that shall tender or make any traverse vacant Bishop- upon any Office concerning his Freehold. ricks.

And no Spiritual Person shall by himself or any other No Clerk shall for him or to his Use, bargain and buy to sell again for Trade or Gain or Profit in any Market, Fair or other Place, any Merchandize Cattle, on pain of

forfeiting Cattle, Corn, Lead, Tin, Hides, Leather, Tallow, Fish, treble the Value, Wooll, Wood, or any manner of Victual or Merchandize; lue, and all on pain to forfeit treble the Value; and every such Bargain and Contract made by them or to their Use, shall be to be void. void; one Moiety of the Forfeitures to the Crown and the other to the Prosecutor.

Except Bargains for Cattle or Goods for his own Use. Provided that if any such Spiritual Person shall without Fraud or Covin buy any Horses to the only intent to use them in his own Business, or any other Goods to be employ'd in Apparel or Furniture, or in the Manuring or Tillage of his own Glebe or Demesne Lands annex'd to his Church, or to be spent in his own House-Keeping; and after the buying of the same doth not find them fit for his purpose, then every such Spiritual Person may lawfully bargain and put away such Things so by him bought without fraud or covin.

Clerk not having Lands of his own sufficient to serve his House, may farm more. Provided that such spiritual Person not having sufficient Glebe or Demesne Lands in his own Hands in the Right of his Church for pasturage of Cattle or increase of Corn for the expence of his Household, or for his Carriages or Journeys, may take in farm other Lands, and buy and sell Corn and Cattle for the only Manurance, Tillage and Pasturage of such Farms, so as the Increase thereof be always employ'd only in the Expence of his Household or Hospitality.

Clerk accepting a second Benefice, makes the first void. And if any Person having one Benefice with Cure of Souls of 8*l.* per Annum or above, accept another with Cure of Souls, and be Instituted and Inducted therein, then the first Benefice shall be immediately void, and the Patron may present again as if the Incumbent were dead.

Pain of procuring a License to take another. And if any Person shall procure and obtain at the Court of Rome or elsewhere, any License, Union, Toleration, or Dispensation to take more Benefices with Cure, or to put in Execution any such License, &c. he shall forfeit 20*l.* and the whole Profits of the Benefice he shall so take to be divided between the Crown and the Prosecutor.

Clerks who are Members of the Council may have 3 Benefices. Provided that all spiritual Men who shall be of the King's Council may purchase License or Dispensation, and take three Parsonages or Benefices with Cure of Souls; and the King's Chaplains not sworn of his Council, the Chaplains of the Queen, Prince or Princess, or any of the King's Children, Brethren, Sisters, Uncles or Aunts, the King or may likewise purchase License or Dispensation, and take two Parsonages or Benefices with Cure of Souls, Royal Family may have two. And every Archbishop and Duke may have six Chaplains, every Marquess and Earl five, and every Viscount of Chaplains and Bishop four, and the Chancellor of England and every Noblemen and Barons

# INCUMBENT.

5

Baron and Knighe of the Garter three Chaplains, whereof Ministers of every one may purchase License, and have two Parsonages State may or Benefices with Cure of Souls. take, each of

And every Dutcheſs, Marqueſs, Counteſs, and whom may Baroneſs, being Widows, and the Treafurer and have two Controller of the King's Houſe, the King's Secretary Benefices, and Dean of his Chappel, the King's Almoner, and Maſter of the Rolls, may have each of them two Chaplains; and the Chief Juſtice of the King's Bench, and the Warden of the Cinque-Ports each of them one Chaplain, whereof every one may purchase License, and have two Benefices with Cure of Souls.

And the Brethren and Sons of all Temporal Lords may 21 H. 8. c. 13. purchase License, and have as many Parsonages and Bene- Brothers and fices, with Cure as the Chaplains of a Duke or an Arch- Sons of Lords biſhop; and the Brethren and Sons of a Knight may each as many as a of them have two Benefices with Cure. *Ibid.* Duke's Chap-

Provided that the ſaid Chaplains ſhall be bound to ex- lain. Brothers hibit where need ſhall be, Letters under the Seal of their & Sons of a Lord and Maſter teſtifying whoſe Chaplains they are, or Knight two. elſe they may not enjoy ſuch Plurality. *Ibid.* Chaplains to

Provided that all Doctors and Batchelors of Divinity, have Letters Doctors of Law and Batchelors of Law Canon, who ſhall teſtimonial. be admitted to any of the ſaid Degrees by any of the U- Doctors, &c. niverſities of this Realm, and not by Grace only, may pur- (not of Grace) chaſe License and keep two Benefices with Cure of Souls. may retain 2 *Ibid.* Benefices.

Provided that every Archbiſhop and Biſhop may Biſhops allow- have two Chaplains above the Number before allow'd ed two more who may take Benefices with Cure of Souls as the reſt. Chaplains *Ibid.* than before.

And every ſpiritual Perſon who ſhall be promoted to Incumbent any of the ſaid Dignities or Benefices (with any Parſonage Non-reſident or Vicarage annex'd) ſhall be perſonally reſident upon his one Month ſaid Dignity, Prebend, or Benefice, or one of them at the together or 2 ſaid Dignity, Prebend, or Benefice, or one of them at the together or 2 Months at ſe- leaſt. And in caſe ſuch ſpiritual Perſon keep not Reſi- Months at ſe- dence at one of his ſaid Dignities, Prebends or Benefices, veral times in but abſent himſelf wilfully one Month together, or two the whole Months at ſeveral times in any one Year, he ſhall forfeit Year, to for- for every ſuch Default 10 l. to be divided between the ſeit 10 l, King and the Proſecutor. *Ibid.*

And every Perſon procuring a Diſpenſation from Rome, And procuring or elſewhere, to be Non-reſident ſhall forfeit 20 l, and a License to be ſuch License ſhall be void. Non Reſident

Provided that this Act of Non-Refidence ſhall not ex- forfeits 20 l, tend to any ſpiritual Perſon as ſhall be in the King's Ser- and the Li- vice beyond Sea, nor to any Scholar abiding for Study cenſe void. without fraud or Covin at any Univerſity within this This Act not



Clerks in the Realm or without, nor to any Chaplain of the King or King's Ser- Queen's attending and abiding in their Household, nor to vice abroad, any Chaplains of the Prince or Princess, or of the Queen's or to Students or Queen's Children, Brethren or Sisters; or of any Arch- in the Uni- bishop or Bishop, or of any Spiritual or Temporal Lord, versities, or to a Chaplain of any Dutchess, Marchioness, Countess, Or to the Viscountess or Baroness; or of the Lord Chancellor, or Chaplains of Treasurer of *England*, of the King's Chamberlain or Ste- the King, the ward of his Household, the Treasurer and Comptroller of Royal Family, the Household, or to any Chaplain of the Knights or of Peers or of the Garter, or of the Chief Justice of the King's Great Officers. Bench, Warden of the Ports, or of the Master of the Rolls, nor to any Chaplain of the King's Secretary, and Dean of the Chappel or Almoner, daily attending and dwelling in any of their Households, during the time that any such Chaplain shall abide and dwell without Or to Persons fraud or covin in any of the said Households; nor to the attending by Master of the Rolls, Dean of the Arches, Chancellor or Order of the Commissary of any Archbishop or Bishop during such Court of time as they shall occupy their said Offices; nor to any Chancery or such spiritual Persons as shall by Injunction of the Lord King's Coun- Chancellor or the King's Council be bound to attend to cil. answer to the Law. *Ibid.*

King's Chap- Provided that it shall be lawful to every spiritual Per- lains may son being Chaplain to the King, to take any Benefices or have any Promotions Spiritual of what Number soever without in- number of curring any pain or forfeiture by this Statute. And it shall Benefices. & be be lawful for his Majesty to license any of his own Chap- Non-Resident lains to be Non-Resident on their Benefices. *Ibid.*

by the King's No spiritual Person beneficed with Cure by Authority License. of any License, Dispensation, or otherwise, shall occupy Clerk shall not by himself, or by any other to his Use, any Parsonage or take a Farm Vicarage in Farm of the Lease or Grant of another, or on pain of ~~40 s.~~ take any Profit or Rent out of such Farm, on pain of per Week and 40 s. a Week for every Week he shall occupy or have such ten times the Stipend or Farm, and upon pain of losing ten Times the Value of the Value of such Profit or Rent as he shall take out of any Rent. such Farm. *Ibid.*

The Forfeiture to be divided between the King and the Prosecutor.

Dignities and Provided that no Deanry, Archdeaconry, Chancellor- Improprati- ship, Treasurership, Chartership or Prebend, nor Parso- ons not deem'd nage that hath a Vicar endow'd, nor any Benefice perpe- Benefices. tually appropriate be taken to be a Benefice with Cure of Souls in any of the Articles aforesaid. *Ibid.*

Clerk to keep Provided that no spiritual Person shall use or keep any no Tan-Yard Tan-House or Brew-House on pain of 10 l. for every or Brewhouse Month

Month he uses the same, one Moiety to the Crown and on pain of 10/- the other to the Prosecucor. *Ibid.* per Month.

Provided that every Dutches, Marquefs, Countefs and Chaplains of Baronefs (Widows) who shall take Husbands under the Noblemens Degree of a Baron, may take such number of Chaplains Widows mar- as if they had remain'd Widows, and these may take such rying again. number of Benefices and be Non-Resident as aforefaid. *Ibid.*

Provided that every spiritual Person having Lands, &c. Clerks having above 800 Marks per Annum, may retain in his Occupation 800 Marks per as much of his Lands and Tenements, &c. as shall be ne- Annum. cessary for pasturage for his Cattle and for Tillage of Corn Clerk may for the Maintenance of his House. And any spiritual hire a Dwel-] Person may hire a Dwelling-House only with Orchards ling-House. or Gardens in any City or Town for his own Habita- tion. *Ibid.*

Every Judge of the King's Bench and Common Pleas, 25 H. 8. c. 16. the Chancellor and Chief Baron of the Exchequer, the Chaplains of King's Attorney and Sollicitor General may each of them Judges, &c. retain one Chaplain having one Benefice with Cure of may have one Souls, who may be absent and Non-Resident on the same. Benefice & be Stat. 25 H. 8. c. 16. Non-Resident

The Tythes, Fruits, Oblations, Obventions, Emolu- 28 H. 8. c. 11. ments, Commodities, Advantages, Rents, and all other Profits of a whatsoever Revenues, Casualties or Profits certain and un- Benefice du- certain, affecting or belonging to any Archdeaconry, ring the Va- Deanry, Prebend, Parsonage, Vicarage, Hospital, War- cancy belong denship, Provostship, or other spiritual Promotion, Bene- to the next fice, Dignity, or Office, growing, rising or coming during Incumbent. the Time of Vacation of the same, shall belong to such Person as shall be thereunto next presented, promoted, in- stituted, inducted or admitted, and to his Executors to- wards the payment of the First-Fruits. Stat. 28 H. 8. cap. 11.

And if any Archbishop, Bishop, Archdeacon, Ordinary, Ordinary or or other Person to their Use, shall take the Fruits, Tythes, others detain - Revenues, Profits, &c. which shall grow due or belong to ing them from any Archdeaconry, Deanry, Prebend, Parsonage, Vica- the succeeding rage or other spiritual Promotion, during the Vacation Incumbent, thereof, and do not restore and pay the same to the next forfeit treble Incumbent, or do let or interrupt the said Incumbent to the Value. receive them, such Archbishop, Bishop, Archdeacon, Or- dinary or other Person, shall forfeit the treble Value of what they shall so receive or detain or let or interrupt the Incumbent to receive; one Moiety to the Crown and the other to the Incumbent, to be recover'd in any of the King's Courts by Action, Bill, Plaint, Information or otherwise. *Ibid.*

**Ordinary may** Provided that it shall be lawful for every Bishop and  
**detain suffici-** Ordinary and their Officers to retain in their Custody so  
**ent for serving** much of the Tythes, Fruits, Rents and Profits as shall be  
**the Cure, &c.** sufficient to pay the Persons who shall serve the Cure du-  
 ring the Vacation; and the Charges of collecting such  
 Tythes, Fruits, Rents, and other Profits, as shall arise  
 during the Vacation. *Ibid.*

**Incumbent** Provided that in case any Incumbent happen to die, and  
**may devise** before his Death cause any of his Glebe Lands to be ma-  
**the Corn** nur'd and sown at his proper Costs and Charges with any  
**growing on** Corn or Grain, he may make and declare his Testament  
**his Glebe.** of the Profits of the Corn so growing. *Ibid.*

**Successor may** Provided that every Successor after the Death of his  
 have the Par-Predecessor may upon one Months Warning after his In-  
 sonage-House duction, have the Mansion House of every such Parso-  
 and Glebe un-nage, Vicarage or other spiritual Promotion, with the  
 sown on a Glebe belonging to the same not sown at the time of his  
 Months warn-Predecessor's Death.

**ing after his** Provided that if the Fruits in the Vacation be not suffi-  
**Induction.** cient to pay the Curate for serving the Cure during such  
**Successor to** Vacation, then the same shall be born and paid by the  
 pay for ser- next Incumbent within fourteen Days after that he hath  
 ving the Cure Possession of his Promotion. *Ibid.*

**where the** Every spiritual Person who shall be promoted to any  
**Profits are** Benefice or Benefices being above the Age of forty Years  
**insufficient.** shall be Resident upon one of his Benefices according to  
 28 H. 8. c. 13. the Intent of the Statute of 21 H. 8. cap. 13. upon the  
**No Students** pains contain'd in the said Act. And no such beneficed  
**of the Uni-** Person being above the Age aforesaid shall be excus'd for  
**versities above** Non-Residence upon his Benefices because he is a Student,  
 40 Years old or Resiant in any of the Universities, except the Chan-  
 unless Heads cellor or Vice-Chancellor, or Commissary, Wardens,  
 of Houses, &c. Deans, Provofts, Presidents, Rectors, Masters, Princi-  
 may be Non-pals, and other Heads of Colleges, Halls or Houses with-  
**Resident.** in the said Universities, Doctors of the Chair and Readers  
 of Divinity in the Common Schools of Divinity in any of  
 the said Universities. *Stat. 28 H. 8. cap. 13.*

**Nor those un-** And all such beneficed Persons being under the Age of  
**der 40, unless** forty Years Resiant or Abiding in any of the said Uni-  
**present at** versities, shall not enjoy the Privilege of Non Residence  
**Lectures, &c.** contain'd in the Proviso of the said Act of 21 H. 8. cap.  
 13. unless he be present at the Ordinary Lectures as well  
 in his House as at the common Schools, and in his proper  
 Person keep *Sophisms*, Problems, Disputations and other  
 Exercises, and be Opponent and Respondent in the same,  
 according to the Ordinances and Statutes of the Univer-  
 sity where he shall be Resident. *Ibid.*



Provided that this Act shall not extend to any Readers Except Readers of publick or common Lecture in Divinity, Law Civil, Physick, Philosophy, Humanity, or any of the Liberal Sciences, or to publick or common Interpreters or Teachers of the Hebrew Tongue, Chaldee, or Greek, in any College or Place in the said Universities, for the time they shall read the said common or publick Lectures; nor to any Person above the Age of forty Years who shall resort to any of the said Universities to proceed Doctors of Divinity, Law And those or Physick, for the time of their said Proceedings, Disputations, or Lectures which they are bound to do by the Statutes of the Universities. *Ibid.*

Every Person who shall be preferr'd, promoted or collated to any Archbishoprick or Bishoprick, or to any other Spiritual or Ecclesiastical Benefice, Promotion, Dignity, Office or Ministry, before he shall take upon him to receive, use, exercise, supply, or occupy any such Bishoprick, Promotion, Dignity, Office or Ministry, shall take the Oath of Supremacy mention'd in this Act. *Stat. 1 Eliz. c. 1.*

Every Person under the Degree of a Bishop who shall pretend to be a Priest or Minister by reason of any other Form of Consecration than that set forth in the time of King *Edw. 6.* or now us'd in this Reign, shall in the presence of his Ordinary where his Benefice lies, declare his Assent, and subscribe to all the Thirty Nine Articles of Religion establish'd in the Year 1562. and shall bring from his Ordinary a Testimonial in Writing of such Assent and Subscription; and on some Sunday in the time of Divine Service in the Afternoon in every Church where by reason of any Ecclesiastical Living he ought to attend, read the said Testimonial and Articles upon pain of being *ipso facto* deprived, and all his Promotions void. *Stat. 13 Eliz. c. 12.*

And if any Ecclesiastical Person shall advisedly maintain or affirm any Doctrine directly contrary or repugnant to any of the said Articles, and being convented before his Ordinary, shall persist therein or not revoke his Error, or after such Revocation again affirm such untrue Doctrine, it shall be lawful to the Ordinary to pronounce Sentence of Deprivation against such Offender, who shall be thereby deprived. *Ibid.*

No Person shall be admitted to a Benefice with Cure except he then be Twenty Three Years of Age at least, and a Deacon, and shall have subscrib'd and read the said Articles, and declar'd his Assent as aforesaid. And every Person to be admitted to a Benefice except within two Months he do read the said Articles, and declare his Assent, shall be incapable of being admitted to the same. *Stat. 23 Eliz. c. 1.*

sent, and administer the Sacraments within one Year after his Induction, he shall be *ipso facto* deprived. *Ibid.*

None to be made a Minister to preach or administer Sacraments under 24.

Nor without a Testimonial. Or he can give account of his Faith in Latin, &c.

Deacons. Incumbent to be a Batchelor of Divinity, or licensed to preach by the Bishop. Lapse.

None shall be made a Minister or be admitted to preach or administer the Sacraments being under Twenty Four Years of Age, nor unless he bring to the Bishop from Men known to the Bishop to be of sound Religion, a Testimonial of his honest Life, and of his professing the Doctrine contain'd in the said Articles, nor unless he can render to the Ordinary an Account of his Faith in Latin, according to the said Articles, or have special Gift and Ability to be a Preacher; nor shall he be admitted to the Order of Deacon or Ministry, unless he subscribe the said Articles. *Ibid.*

None shall have a Benefice with Cure of the Value of 30 l. per Annum, unless he be a Batchelor of Divinity, or a Preacher allow'd by some Bishop, or by one of the Universities. *Ibid.*

All Admissions, Institutions or Inductions, and all Tolerations, Dispensations, Qualifications and Licenses to the contrary hereof shall be void. *Ibid.*

Provided no Lapse shall accrue till six Months after Notice of such Deprivation given to the Patron by the Ordinary. *Ibid.*

13 El. c. 20. Lease of a Benefice to be void on eighty Days Non-Residence.

And the Incumbent to forfeit a Years Profits.

Clerk that hath 2 Livings may let one to his Curate.

14 El. c. 11. Words in the last Act repealed.

No Lease to be made of any Benefice or Ecclesiastical Promotion with Cure, or any part thereof, not being Impropriated, not to endure any longer than while the Lessee shall be ordinarily Resident, and serving the Cure, without Absence above fourscore Days in any one Year. But every such Lease so soon as it, or any part thereof, shall come to any Possession or Use above forbidden, or immediately upon such Absence shall be void, and the Incumbent so offending shall lose one Years Profits of his Benefice to be distributed by the Ordinary among the Poor of the Parish, and all Charges on such Benefices with Cure with any Pension or Profit to be yielded out of the same, other than Rents reserv'd upon Leases made according to this Act, shall be void. 13 Eliz. c. 20.

Provided that every Parson who shall have two Benefices may demise one of them upon which he shall not be ordinarily Resident, to his Curate only who shall there serve the Cure; but such Lease shall endure no longer than such Curate's Residence, without Absence above forty Days in any one Year. *Ibid.*

It is provided that these Words in the 13 Eliz. c. 20. viz. *So soon as it or any part thereof come to any Possession or Use above forbidden, or, shall be repeal'd.* Stat. 14 Eliz. cap. 11.

# INCUMBENT.

II.

All Persons as well Ecclesiastical as Temporal shall take 7 Jac. c. 6. the Oath of Allegiance specify'd in the 3 Jac. c. 4. Clergy to take

Every Person who shall hereafter be presented or put the Oath of into any Ecclesiastical Benefice, shall in the Church or Allegiance. Chappel belonging to his Benefice or Promotion, within 14 Car. 2. c. 4. two Months after he shall be in the actual Possession of Incumbent to the same, upon some Lord's Day publickly read the declare his Morning and Evening Prayer appointed to be read by the Assent, &c. Book of Common-Prayer at the Times therein appointed, and shall after declare his unfeign'd Assent and Consent in these Words, and no other.

*I A. B. do hereby declare my unfeign'd Assent and Consent to Form of the all and every Thing contain'd and prescrib'd in and by the Book Declaration, entituled The Book of Common-Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church, according to the Use of the Church of England, together with the Psalter and Psalms of David, pointed as they are to be said or sung in Churches, and to the Form or Manner of making, ordaining and consecrating of Bishop, Priests, and Deacons.*

On pain of being depriv'd of all his Benefices and On pain of Promotions; and from thenceforth every Patron and Do-Deprivation. nor may present or collate again, as though the Offender were dead. *Ibid.*

And where any Incumbent doth reside on his Living, Incumbent and keep a Curate, such Incumbent shall once a Month who has a at least publickly read the Common-Prayers and Service, Curate, to and Administer each of the Sacraments in his Parish- read the Ser- Church or Chappel in such manner as is appointed by the vice once a Book of Common-Prayer, on pain of 5 l. to the Use of Month, &c. the Poor of the Parish, of which Offence he may be con- And admini- victed by two Witnesses before two Justices of Peace, such ster the Sacra- Penalty to be levy'd by Distress and Sale by Warrant from ments, on pain the said Justices to the Church-Wardens or Overseers of of 5 l. the Poor, in default of payment thereof within ten Days. Conviction *Ibid.* before two

No Person shall be capable to be admitted to any Bene- Justices of fice or Promotion, or shall presume to consecrate and ad- Peace, and Pe- minister the Lord's Supper before he be Episcopally or- nalty levy'd by dain'd a Priest on pain of 100 l, one Moiety to the King, distress & sale. and the other between the Poor of the Parish and the None to be Profecutor, and of being disabled to take Priests Orders admitted to a Benefice, or for one Year next after. *Ibid.*

If any Rector or Vicar having Cure of Souls shall no- to administer minate and present any Curate to the Bishop or Ordinary the Lord's to be licensed to serve the Cure of such Rector or Vicar Supper until in his Absence, the said Bishop, &c. having regard to the Episcopally greatness of the Cure and the Value of the Benefice, shall Ordain'd, on before pain of 100 l.



12 *Ann. c. 12.* before the granting such License, appoint by Writing under his Hand and Seal, a certain Stipend or Allowance to ascertain the not exceeding 50 *l. per Annum*, or less than 20 *l.* to be paid at such times as he shall think fit by such Rector or Vicar to such Curate for his Maintenance. *Stat. 12 his Hand. Ann. cap. 12.*

If any Ecclesiastical Person purchase the next Avoidance of a Living, the Bargain shall be void. And deem'd a Symoniacal Contract, whereupon the Crown may present. Such Offender also is disabled to enjoy the Turn, and liable to be punished for Symony. And whereas some of the Clergy have procur'd Preferments for themselves by buying Ecclesiastical Livings, it is enacted, That if any Person shall for any Sum of Money, Reward, Gift, Profit or Advantage, directly or indirectly, or for or by Reason of any Promise, Agreement, Grant, Bond, Covenant, or other Assurance, for any Sum, Reward, Gift, Profit or Benefit whatever, directly or indirectly, in his own or another's Name, procure or accept the next Avoidance or Presentation to any Benefice with Cure of Souls, Dignity, Prebend, or Living Ecclesiastical, and be presented or collated thereupon, the same shall be utterly void. and such Agreement shall be deem'd to be a Symoniacal Contract. And it shall be lawful for the Crown to present or collate, or bestow every such Benefice for that one Turn only. And the Person so procuring or accepting such Benefice shall be adjudg'd disabled to enjoy the same, and shall also be subject to such punishment as may be inflicted by the Ecclesiastical Laws for any corrupt Agreement made after any Benefice becomes vacant, *Ibid.*

## READINGS.

None to be admitted a Priest, &c. but according to the Rubrick.

As no Man is capable of a Church Promotion but he who is ordain'd both Deacon and Priest, so no Man is to be accounted or taken to be a lawful Bishop, Priest or Deacon in the Church of *England*, or suffer'd to execute any of the said Functions except he be call'd, try'd, examin'd and admitted thereunto according to the Form prescrib'd and set forth in and with the Book of Common-Prayer, and confirm'd by Act of Parliament.

Orders may be taken on any Holiday.

Regularly Deacons and Priests are to be ordain'd only upon the four Sundays immediately following the four *Ember-Weeks*; but at this Day upon urgent Occasion, Orders both of a Deacon and Priest may be given on any other Sunday or Holiday by every Diocesan, but one is not to be admitted to the Order of Priesthood until he hath been

been a Deacon for the Space of a whole Year; yet if for reasonable Causes it shall otherwise seem good to his Bishop, he may be admitted to the Order of a Priest in a shorter time.

If any Impediment or great Crime be objected against him that is to be made either Priest or Deacon at the Time that he is to be ordain'd, the Bishop is bound to surcease from ordaining him until the Party accus'd shall be found clear of that Crime, (*Rubr.*) If a Person that doth desire to be ordain'd a Priest or Deacon be a Bastard, he is not without a Dispensation to be ordain'd.

Orders deny'd on a Criminal Account.

For Bastardy.

*11 H. 4. 7, 8. a.* But the King as well as the Archbishop may dispense with such Person, so that he may be admitted to holy Orders. *5 Co. de jure Ecclesiastico, and Horsfull and Wall's Case, Pasch. 9 Jac. Davis 73.* But if such Person be ordain'd and made Parson of a Church, although he is deprivable, yet, if he doth obtain a Dispensation from the King or Archbishop before he be depriv'd, he shall retain the Benefice. *11 H.*

Dispensation may be granted after the Church is full.

*4. 38, 76, 77, 60.*

A Priest by his Ordination receives Authority to preach the Word and administer the Holy Sacraments in the Congregation where he shall be lawfully appointed thereunto, (*Rubr.*) *Stat. 1 Mar. cap. 3.* Yet notwithstanding he may not

One Ordain'd a Priest may not preach without a License.

preach without the License either of the King or his respective Archbishop, Bishop, or other lawful Ordinary, or one of the Universities of Oxford or Cambridge. *Stat. 1 Mar. cap. 3. 14 Car. 2. cap. 4. 13 Eliz. cap. 12.* But a License by

But a License by any Bishop is sufficient.

the Bishop of any Diocese is sufficient, although it be only to preach within his Diocese, the Statute not requiring any License by the Bishop of the Diocese where the Church is. *Pasch. 15 Car. 2. B. R. Brown v. Spence. 1 Keble 503.* But if

Acts of a mere Layman Instituted to a Benefice, good.

a Person that is a mere Layman be admitted and instituted to a Benefice with Cure, and doth administer the Sacraments, marry, &c. these and all other Spiritual Acts perform'd by him during the Time that he continues Parson in Fact, are good; so that the baptiz'd by such Person are not

to

One may be  
presented by  
Word of  
Mouth.

to be re-baptiz'd, nor Persons marry'd by him to be marry'd again to satisfy the Law. *Pasch.* 42. *Eliz. B. R. Costard v. Winder.* 3 *Cro.* 775. And by *Moor* the same Case, 606.

When one is ordain'd a Priest, he may be presented to a Parsonage or Vicarage, and this Presentation is the Act of the Patron offering his Clerk to the Bishop of that Diocese to be Instituted to such a Church in these or the like Words directed to the Bishop, *Presento vobis A. B. Clericum meum ad Ecclesiam de Pale, &c.* This may be done as well by Word as by Writing; and if it be by Writing, it is no Deed, for the Presentation of the Clerk is but the Direction to the Bishop, and in the nature of a Letter to him; and this is the Reason that the King himself may present by Word.

If a Living be  
laps'd, the Pa-  
tron may pre-  
sent if the Bi-  
shop have not  
collated.

The Clerk being furnish'd with a Presentation, he is to apply himself to his Ordinary for Admission and Institution, and the Bishop of the Diocese within which is the void Church for the most part is the Ordinary by whom he ought to be admitted and instituted; and though the Church is laps'd to the Metropolitan, yet if the Patron doth present before the Metropolitan collate his Clerk, his Presentation may be directed to the Ordinary of the Diocese, who may thereupon institute the Clerk presented. *Rolls Ab.* 2. p. 348. *contra H.* 41. *Eliz. B. R.* by *Popham*. But when the See is void, the Dean and Chapter or other Guardian of the Spiritualities by Custom have the Authority of Admitting and Instituting. *Watf.* 106.

In what Ca-  
ses the Bishop  
is Judge of the  
Ability or  
Fitness of the  
Clerk.

The Bishop upon Examination may refuse the Person presented, for he is the Judge of the Ability and Sufficiency, and not a Minister. But in a *Quare Impedit* brought against the Bishop for refusal of the Clerk, he must shew the Cause of his refusal specially and directly: Because the Clerk is of ill Life and Conversation, or a Schismatick in general, is not sufficient without shewing what Crimes or sort of Schism he has been guilty of. The Temporal Court then will judge  
whe



whether the Cause be just, or not; and if the Party deny the same, the Court may write to the Metropolitan to examine the Matter, and certify it. And though the Matter be of a Spiritual Nature, it shall be try'd by a Jury; for whether the Cause be Temporal or Spiritual, the Examination of the Bishop concludes not the Clerk; for though the Bishop is Judge of the Ability, he is not the ultimate Judge. But in Case of refusal for insufficiency in Learning, it hath been adjudg'd, that the Ordinary is not accountable to any Temporal Judge. And that *in Literatura minus sufficiens, &c.* is a good Plea without setting forth the Kind of Learning or the Degrees of it. That the Presentee has a Benefice already, is no good Cause of refusal; for Crimes that are *Mala in se*, as Incontinency, Drunkenness, Perjury, &c. he may be refus'd, but not for Crimes that are *Mala prohibita*, as haunting Taverns, &c. 3 Lev. 313. Rep. 58.

If the Bishop by Examination doth find the Clerk capable of the Benefice, after he hath seen other Matters performed by him which are required of him in order thereunto, he is to admit and institute him. Admission is nothing else but the Ordinary's Declaration that he doth approve of the Presentee as a fit Person to serve the Cure of the Church to which he is presented. And institution is that Act by which he doth commit to him the Cure thereof.

It is not of Necessity that the Examination, Admission or Institution be made by the Ordinary within the Diocese in which the Church is; for the Jurisdiction of the Ordinary as to such Matters is not local, but follows the Person of the Ordinary where-ever he goes. *Hill. 9 Car. Cort v. Bishop of St. David's. Jones 331. Owen and Prichard's Case, 1 Cro. 341. Hutton's Case, Hobart 15. Parson's Counsellor, 8, 9. 21 E. 4.*

The Clerk being Instituted, the Institution is good without any after-Act, yet the Ordinary is wont to make Letters Testimonial thereof; but

Ordinary may  
Institute, &c.  
out of the  
Diocess.

Induction.

but what Seal the Ordinary doth make use of in that Case is not material. *Hill. 9 Car. Cor. v. Bishop of St. David's. Jones 331. Owen and Prichard's Case. 1 Cro. 341.*

After Institution is had, Induction must be obtain'd, which is the putting the Clerk in Possession of the Church, and is that Act by which he is made compleat Incumbent. And therefore the Bishop or other Ordinary Instituting doth make a Mandate to that Person who hath the Right, and upon whom doth lie the Duty of Inducting, thereby requiring him to induct the instituted Clerk into his Benefice. 38 *Ed. 3. 3. b. Parson's Counsellor, 8, 9.* But ordinarily the Archdeacon is the Person to whom the Bishop is to direct his Mandate, as being the Person who ought to induct or give Possession unto the Clerks instituted to any Churches within his Archdeaconry. 38 *Ed. 3. 3. b.* But the Bishop may direct his Mandate to such other Clergymen as he pleases, to make Induction. *Parson's Counsellor, 8.* And by Prescription or Composition others as well as Archdeacons may make Inductions; for by Prescription the Dean and Chapter of *Litchfield* do make Induction, and so do the Dean and Chapter of *St. Paul's*. 11 *H. 4. 9.* And if Induction be made by the Bishop, when it doth appertain to the Dean and Chapter by Prescription, the Induction is void. 11 *H. 4. 9. contra 11 H. 6. Quare Impedit, 162.* And yet it is said to be granted, that where a Dean and Chapter have us'd to make Induction to a Prebend upon Presentation by the Bishop or others, yet if the Bishop doth induct the Prebend, it is good at the Common Law for that he is Officer and Ordinary immediate to the Court, and the Court shall not take Consuance of the peculiar Jurisdiction. 11 *H. 4. 7. Presentation al. Esglise, 13.* It is said that an Induction made by the Patron is void. 11 *H. 4. 10. Parson's Counsellor, 8.* But this I suppose is to be understood when it is done of his own Authority without special Privilege; for I doubt not but that a Bishop may give Induction as well as Institution.

to a Benefice of his own Gift where the Right of Induction to a Benefice within his own Diocese is in him; or however that the Archdeacon may induct to a Benefice within his Archdeaconry, although he be a Patron thereof; nevertheless the Rule is *Modus & Conventio vincunt legem*, and therefore though *de Jure Communi*, neither Bishop nor Archdeacon may induct a Clerk to their Benefices of which they are Patrons, yet by Prescription or Composition their Induction in such Case must be good. And accordingly tho' the Bishop of *Chichester* doth admit the Dean of the exempt Jurisdiction of *Battell* within that Diocese, and doth commit to him the Cure and Jurisdiction of the Church; yet the Patron thereof is to institute and induct the Dean, and the Patrons accordingly have given the Deans Institution and Induction for some hundreds of Years, and without question such Institution and Induction is good. But this Deanry was originally given to the Incumbent as a Donative only by the Patron, and the Bishop admits or approves of the Patron's Presentee, and commits to him the Cure and Jurisdiction by Composition.

If the King doth grant one of his free Chapels, the Grantee shall be put in Possession by the Sheriff of the County, and not by the Ordinary of the Place. 14 H. 4. 11. b. And in some Places a Prebend shall have Possession without Induction, as at *Westminster*, where the King makes Collation by his Letters Patents, and thereupon the Party enters upon the Prebend without other Induction, and good. And in some Places the Bishop makes the Induction: in some, others make it, and the Usage generally shall hold place. 11 H. 4. 7. *Presentation al. Esglise*, 13. For the most part the Archdeacon doth not give Induction in his proper Person, but sends a Mandate for the Induction of the Clerk, which if it be made *Universis & singulis Rectoribus, Vicariis, Clericis & literatis infra Archidiaconatum meum ubicunque constitutis*, and a Minister or Preacher who is not Resident with-



Church full  
by Institution.

in that Archdeaconry, doth upon such Mandate make the Induction, the Induction is good ; and the Opinion of four Doctors of Law was shew'd to the Court accordingly. *Trin. 7 Jac. Christopher Dean's Case. Noy, 134.*

By Admission and Institution alone, the Church is full against all Persons but the King, yea and against the King too, as 'tis said by some Books, if he claim from a common Person, or that the Right of presenting to the Church be not truly in him. *13 Jac. Hitching and Glover's Case. Rolls 191 and 227.* and thereby the Clerk hath Authority, and is oblig'd to attend the Cure of Souls belonging thereto. *22 H. 6. 25. 44 Ed. 3. 3. 11 H. 4. 9. 33 H. 6. 13.* Also he that is instituted may enter into the Glebe, and take the Tythes before Induction, and hath Right to have them against any Stranger, by *Coke in Hitching and Glover's Case. Pasch 13 Jac. Roll. 1. Rep. 227.* And yet before Induction he hath not, nor is seisd of the Temporalities of the Church, so that he may grant, or sue for any of them. *22 H. 6. 27. 38 Ed. 3. 4. Trin. 20 Eliz. Hard v. Bickley. Plowden, 528.* But after Induction is had, the Church is full, as well against the King as against any other Person. *Hill. 11 Jac. Needler v. Winton & Needler 1. Brownlow and Goldsborough 163.* And the Temporalities, as Tythes, Glebe and Oblations are actually invested in him.

Donatives.

A Benefice that is given by a Bishop's Collation whilst in the Possession of a Bishop, is presentative when in a Lay-Hand, and a Bishop's Clerk is inducted as any other Patron's Clerk is. But Donatives in whose Hands soever they be, are generally given only by Donation, and the Clerk to whom the same is given needs no such Induction. *Hill. 41 Eliz. Quarles v. Fairchild. 3 Cro. 653.* And if a Donative be given without a Limitation of Estate for Life, or otherwise, the Gift is good, and the Grantee hath as large an Estate therein by such Grant, as if it had been granted to him expressly for Life, or he had come

to

to it by Election, or by Institution and Induction; for a Spiritual Benefice cannot be granted for Years, or at Will, for then the Freehold thereof might be always in perpetual Abeyance, which Inconvenience the Law will not suffer. *Pasch. 5 Jac. B. R. Davis, f. 45, 46.* And tho' generally these Donatives be in themselves to be had only by the Patron's Collation, yet if the true Patron of such a Donative doth once present to the Ordinary of the respective Diocese, and doth suffer Admission and Institution thereupon, he thereby hath made it always presentable. *Pasch. 3 Jac. Fairchild v. Gaire. 2 Cro. 63. Co. Lit. 344. a.* And hath made it also for ever to become a Benefice with Cure of Souls. *Clerk v. Heath. Mich. 21. Car. 2. B. R. 2 Keeble 556.* And this holds not only in the Case of Common Patrons of Donatives, but in the Case of the King also, by *Latok* in his Argument of *Cremar* and *Burnet's Case. Pasch. 1651. Styles, 17. 2. Watsf. Compl. Incumb. 122.*

Though a Clerk taking Title to a Donative doth not, or need not apply himself to the Ordinary for Admission thereto, yet I conceive that he ought (what Donative soever he takes) at or before his Admission to be Incumbent, or have Possession thereof, to subscribe before his respective Archbishop, Bishop, or Ordinary of the Diocese, the Declaration injoin'd to be subscrib'd by the Statute of 14 *Car. 2. cap. 4.* that is, so much of it as is now in force. And if the Donative be either Parsonage or Vicarage, to have a Certificate under the Hand and Seal of the Person before whom he subscribed, and to read the same with the Declaration aforesaid in the Church belonging to his Donative. *Watsf. Compl. Incumb. 123.*

If the whole Morning and Evening Prayer, or Incumbent all the Prayers appointed to be read by the Book punishable if of Common Prayer on every Sunday and Holy-day, and upon any occasion both in the Morning and Afternoon of such Days without the omission of any one or part of any one of them, &c.

be not read, the Offender is punishable by the Statute 14 *Car. 2.* and *Stat. 1 Eliz. c. 2.*

And not only the Morning or Evening, but both Morning and Evening Prayers at the Time appointed are to be read by every Minister obliged to officiate in every Church, Chappel and Place of Publick Worship every Sunday and Holiday, &c. from which it follows, that no Minister that hath two Benefices, can by himself alone supply both his Cures, or if he hath but one Benefice, can serve that with another as Curate; or if his Benefice hath a Chappel of Ease belonging to it in which he is bound to say Divine Service, or to provide one to say it, can by himself in Person officiate in both. Nor can one Person be a Curate in two Churches, unless such may satisfy the Law by reading both Morning and Evening Prayers at each Place, which cannot well be done; nor may a Minister read Morning Prayer at one Church and Evening Prayer at another Church or Chappel by the Allowance of the Ordinary; for he cannot dispence with Acts of Parliament, neither can he serve one Cure on one Sunday and another Cure on the next, nor can he strictly speaking at any Time neglect to read either Morning or Evening Prayer in his Church, however not unless his neglect be necessary, but shall be subject to punishment by this Statute of 14 *Car. 2.* and *Stat. 1 Eliz. cap. 2.* *Watf. Compl. Incumb. 234.*

Clerk oblig'd  
to read Prayers  
on Holydays.

State Prayers.

Every Minister in any Church, as it seems, is as much bound to say Morning and Evening Prayers on every Holiday, and on the Fifth of *November*, the Thirtieth of *January*, and on the Twenty Ninth Day of *May*, as on the Lord's Day. But *Quare*, For those Forms of Prayer appointed to be read on those Days are no part of the Book of Common Prayer, but added to it by the King's Order. And the Obligation of Ministers to read such Forms of Prayer as have been or shall be occasionally prescrib'd for any solemn Days of Fasting or Thanksgiving seems to be founded not so much on any express Law or Statute



as on the Equity and Reason of the Thing, that extraordinarily Occasions should be supply'd with special and extraordinary Forms, which may be said to be appointed but not enacted, and rather allow'd than order'd; yet they may not only be safely us'd without Trespass upon any Act of Uniformity, but being drawn up by the Bishops of the Church, and recommended by the King's Authority, and containing nothing contrary to the establish'd Forms of Divine Service, they ought to be us'd at the proper Times by every Minister. And though there is no statutable Penalty for such Neglect or Omission, yet such Contempt of Authority may undoubtedly be punish'd by other legal Ways. *Wats. Compl. Incumb. 234.*

There seems to be a common Error in Persons Of admitting to be qualified for any Office by receiving the Sacrament of the Lord's Supper according to the Order of the Church of *England*, to challenge an absolute Right of Admission to it, and to pretend that an Action upon the Case may be brought against those Ministers who refuse to administer it unto them, and will not allow the Minister a Liberty to inquire into their fitness to receive it. The Persons to be thus qualified present themselves to communicate either, first, more regularly to their own Parish Priest, or secondly, to some other Parochial Minister: If to their own Parish Priest, he has as much Right by the Rubrick to suspend his Ministration to any Magistrate or Officer elect, as to any of his meanest or most private People, if he can give the same Reason for rejecting of him. Or if the Person to be qualified offer to communicate with some other Parochial Minister, such Minister may perhaps more justly refuse to admit him, because, first, no Priest is oblig'd to administer the Sacraments to any but his own People committed to his peculiar Charge, and may decline admitting any Foreigner or Stranger. Besides, some faithful and consciencious Ministers have much doubted whether they ought to admit those Persons to the Holy Sacrament for a legal Qualification

Persons to the Lord's Supper.

Especially  
Dissenters who  
come to qualify themselves  
who for an Office,

who came only to serve that Turn, and who at other Times live in a negative Separation, absenting themselves from Church and the Holy Offices of it, or perhaps in a positive Schism, joining themselves to some separate Congregation. This is certainly a most scandalous Practice in those Lay-Persons who can thus dare to mock God, and play with the Holy of Holies in Religion! And even those Clergymen who connive at this Hypocrisy of Communicants, may be thought in some measure partakers of those other Mens Sins, and help to prostrate Sacraments. To prevent this and other Mischiefs, it is highly Expedient that the good Rule in the *Rubrick* should be better observ'd: So many as intend to be partakers of the Holy Communion *shall signify their Names to the Curate* at least some Time the Day before. *Wats. Incumb. 238.*

What Residence is requir'd in the Parson.

The Parson ought to abide upon his Rectory and in the Parsonage-House, and not in any other House within the Parish; for the Statute is intended not only for serving the Cure, and for Hospitality, but to maintain the House in repair, that his Successors may keep Hospitality too. Lawful Imprisonment, Sickness, Want of a Parsonage-House are good Excuses for Non Residency, and excepted out of the Act by Construction of Law; for the Words of the Statute are, That He that *willingly* absents himself, &c.

Incumbent's Duty as to Baptism.

Though by the *Rubrick* every one having Cure of Souls is bound to say and use the Celebration and Administration of the Sacrament of Baptism to all the Infants of baptized Parents, yet in some Cases he may suspend at the least to baptize Persons brought to him for that purpose.

But in case of Necessity, as if a Child be sick, &c. the Curate is bound to baptize it on any Day and in a private House, and without God-Fathers or God Mothers, and then the Child (if it afterward live) regularly ought to be brought into the Church in the Presence of the Congregation there, that if the Minister of the same Parish did baptize it, he may certify the Congregation that

it was duly baptiz'd ; or if the Child was baptiz'd by any other, that he may examine whether the Child was lawfully baptiz'd, that is, whether by a lawful Minister, by proper Water, and in the Name of the Father, and of the Son, and of the Holy Ghost ; for if it was done with improper Matter, as Milk, or Wine, or other Liquid instead of Water, or not in the Name of the Father, and of the Son, and of the Holy Ghost, the Minister may baptize it according to the Form appointed for publick Baptism ; or if upon Examination of the Matter, he doth find that all things were done as they ought to be, that he may certify as much to the Congregation, at which Time God-Fathers and God-Mothers are to be present, and to undertake for the Child. *Rubrick.*

And Note, That a Child baptiz'd with Water in the Name of the Father, and of the Son, and of the Holy Ghost is said to be sufficiently baptiz'd, although not baptiz'd by a lawful Priest, as may be collected from the *Rubrick* ; and so it is if the Child be baptiz'd by other Form, yet the Person baptizing not being a lawful Priest is punishable like as a lawful Priest baptizing by other Form than is set down by the Book of Common-Prayer is punishable.

If a Minister hath in his Parish any unbaptiz'd Person that is of Years of Discretion, and which doth desire to be baptiz'd, it seems the Minister ought to suspend the baptizing of him until Notice of such Person's Purpo'se shall be given to the Bishop, or to whom he shall appoint to take Cognizance of such Matters, and until such Time as he shall be examined and found to be sufficiently instructed in the Principles of Christian Religion. (*Rubrick.*) And yet he is to baptize (even as Infants) those not baptiz'd in their Infancy that be brought to him before they come to Years of Discretion, that is, either by the Form of publick or private Baptism as necessity shall require, and without notice given to the Bishop, or precedent Examination. *Rubrick.*



His Duty as  
to Burials.

But though it be his Duty, generally speaking, to bury those that die within his Parish, yet he ought not to bury the Corpse of any Person dying unbaptiz'd, excommunicated, or who hath laid violent Hands on himself. *Rubrick.*

In Marriages.

And though it be his part to solemnize Matrimony betwixt those of his Parish that are to be married, yet the Banns of all that are to be married together must before their Marriage be publish'd in the Church three several Sundays or Holidays in the time of Divine Service immediately before the Sentences for the Offertory in the very Form of Words appointed in the *Rubrick.* And if the Persons that are to be married dwell in divers Parishes, the Banns must be ask'd in both Parishes, and the Curate of the one Parish shall not solemnize Matrimony betwixt them without a Certificate of the Banns being thrice ask'd from the Curate of the other Parish; and at their Day of Marriage, if any Man do alledge and declare any Impediment why they may not be coupled together in Matrimony by God's Laws or the Laws of this Realm, and will be bound and sufficient Sureties with him to the Parties, or else put in a Caution to the full Value of the Charges as the Persons to be married do thereby sustain, to prove his Allegation, then the Solemnization must be deferr'd until such time as the Truth be try'd. *Rubrick.*

Of their Parish Clerks.

Every Parson, Vicar, or Curate hath a Parish Clerk under him, who was formerly a real Clerk in Orders, though now he is generally a Layman. He is the Assistant to the Parson, Vicar, or Curate in performing Divine Services; he is chosen by the Minister for the time being, unless there is a Custom that the Parishioners or Church-Wardens should appoint him, because the Custom is temporal, and cannot be alter'd by a Canon. He ought to be depriv'd by him that plac'd him in the Office; but if he is unjustly depriv'd, a *Mandamus* will lie to the Church-Wardens to restore him, as it will lie to the Bishop or Archdeacon to swear him when he is elected. The

Law

Law looks upon him as an Officer for Life, and one that hath a Freehold in his Place, and not as a Servant, and therefore will not suffer the Ecclesiastical Court to deprive him, but only to correct him for any Misdemeanor by Ecclesiastical Censures. The same Law is with respect to a Sexton that has a fix'd Salary. 1 *Ventr.* 143, 153. 2 *Roll. Abr.* 224.

The Soil and Freehold of the Church being in the Parson alone, and not being a common Burying-Place for all the Parishioners as the Church-yard is, neither the Church-Wardens or Ordinary himself can grant License of Burying to any Person within the Church but only the Rector or Incumbent thereof. *Hill.* 12 *Jac. B. R. Frances v. Lee*, 2 *Croke* 366. *Mich.* 12 *Jac. Day v. Bedingsfield.* *Noy*, 104. Yet the Church Wardens by Custom may have a Fee for every Burial within the Church, by reason the Parish is at the Charge of repairing the Floor. *Mich.* 27 *Car.* 2. *Andrews v. Sympson.* 3 *Keble* 504, 523, 527. *Ventris* 274.

Of Burials in the Church,

As to Residence the Vicar seems to be upon the same foot with the Parson; for the Statutes against Pluralities do no more make two Vicarages incompatible than two Parsonages: But both Vicar and Parson are subject to the same Penalties if they be wilfully Non-Resident, and the Bishop by his Dispensation can save neither Vicar nor Parson from the Penalties of the Statute Law in point of Residence. Indeed a Vicar is sworn to Residence, which a Rector is not; but this Oath is with a Condition, *nisi aliter dispensatum fuerit*. So that if the Vicar be dispens'd with, he is in this respect too upon the level with the Parson. But it is to be observ'd, that a Bishop can only dispence for his own Life-time, and his Dispensation dies with him.

Of Residence,

He who is legally settled in two Benefices has a Right to be dispens'd with as to one of them, and his Metropolitan's Dispensation to hold these two Benefices is at least a virtual Dispensation to be Non-Resident in one of them, though they be both

both

Incumbents  
exempted  
from Offices,  
but not from  
repairing-  
High-Ways,  
or finding  
Horse and  
Arms for the  
Militia.

both Vicarages. Formerly indeed, Archbishop did scarce ever dispense with Clergymen to hold two Vicarages, but of late Years 'tis sometime allow'd of with good Reason. Archbishop *Sancroft* himself did it, though not often.

A Clergyman is said to be exempt from all Secular Burdens and Charges. And indeed he is not oblig'd to serve in any Parish or Ward-Office or to serve upon Juries, in which he is upon the level with Dissenting Teachers and Apothecaries; but as for his being exempted from contributing to the Repairs of Bridges or High-Ways, or finding Horse or Arms, &c. for the Militia, since the Statutes relating to these Things are general and no Orders of Men excepted, it will be difficult to excuse them in these Instances.

### Jeofails.

32 H. 8. c. 30. **I**F an Issue be try'd in any of the King's Courts of Record, the Justices shall proceed and give Judgment in the same, any Mispleading, lack of Colour, insufficiency of pleading or Jeofail, any Miscontinuance or Discontinuance or Misconveying of Process, Misjoining of the Issues, lack of Warrant of Attorney of the Party against whom the Issue shall be try'd, or any other Default or Negligence of any of the Parties, their Counsellors or Attorneys, notwithstanding; and the said Judgment shall stand in force according to the Verdict without any Reversal, or undoing the same by Writ of Error or falsification of Judgment, as though no such Default had been committed. Stat. 32 H. 8. c. 30.

18 Eliz. c. 14. **I**F a Verdict be given in any Court of Record, the Judgment shall not be stay'd or revers'd for any Default in Form, or lack of Form touching false Latin, or variance from the Register, or other Default in Form in any Writ original or judicial Count, Declaration, Plaint, or Bill, or for want of any Writ original or judicial, or for any want of Form, insufficient Return of any Sheriff or other Officer, or for want of Warrant of Attorney, or for any Default in Process upon or after any Aid prier or Voucher, nor shall any such Judgment after Verdict be revers'd for any of the Causes aforesaid. Stat. 18 Eliz. c. 14.

Provided



Provided that this Act shall not extend to any Writ, Not to extend Declaration, or Suit of Appeal of Felony or Murder, or to Criminal to any Indictment or Presentment of Felony, Murder, Prosecutions. Treason, or any Process upon any of them, nor to any Writ, Bill, Action, or Information upon a popular or penal Statute. *Ibid.*

If a Verdict shall be given in any Court of Record, the 21 Jac. 1. c. 13. Judgment shall not be stay'd or revers'd for any variance Nor for variance in Form only between the original Writ or Bill and the Declaration, Complaint or Demand, or for lack of an Aver- the Writ and ment of the Life of any Person, so as upon Examination Declaration, such Person be prov'd to be in Life, or for that the *Venire* &c. or for *Faciās*, *Habeas Corpus*, or *Distingas* is awarded to a wrong that the *Venire* Officer, upon any insufficient Suggestion, or by reason the is awarded to a *Vifne* is in some part mis-awarded, or sued out of more or wrong Officer, &c. fewer places than it ought to be, so as some one place be &c. right nam'd; or for that any of the Jury who try'd the said Issue is Mis-nam'd, either in Surname or Addition in any of the said Writs or Returns. so as upon Examination it be prov'd to be the Man return'd; or by Reason there is Or for a Mis- no Return upon any of the said Writs, so as a Panel of return. or no Jurors be return'd and annex'd to the said Writ; or for Return, &c. that the Return-Officer's Name is not set to the Return of such Writ, so as it be prov'd the said Writ was return'd by such Officer, or for that the Plaintiff in an *Ejectiōe firme* in any personal Action being an Infant appear'd by Attorney, and the Verdict pass'd for him. Stat. 21 Jac. 1. cap. 13.

Provided that this Act shall not extend to any Writ, Criminal Ca- Declaration, or Suit of Appeal of Felony or Murder, or ses excepted. to any Indictment or Presentment of Felony, Murder, Treason, or any Process upon any of them; nor to any Writ, Bill, Action, or Information upon a popular or penal Statute. *Ibid.*

If any Verdict shall be given in any of his Majesty's 16 & 17 Car. 2. c. 8. Courts of Record at *Westminster*, or in the Counties Palatine of *Chester*, *Lancaster*, or *Durham*, or of the great Sessions in *Wales*, Judgment shall not be stay'd or revers'd for shall not be default in Form, or lack of Form, or for that there are stay'd or re- not Pledges, or but one Pledge to prosecute return'd upon vers'd for de- the original Writ; or because the Name of the Sheriff is fault of en- not return'd upon it; or for default of Pledges in any tring Pledges, Bill or Declaration; or for default of alledging the bring- or of alledging ing into Court any Bond, Bill, or other Deed mention'd the bringing in the Pleadings; or for default of Allegation or bring- into Court ing into Court Letters Testamentary, or Letters of Ad- any Deed, &c. ministration; or for the omission of *Vi & Armis* or *contra* mention'd in *pacem*; or by Reason of mistaking the Christian or Sur- the Declarati- name on, &c.

Or for the omission of *Vi & Armis* or *contra pacem* or mistaking the Name, &c. where once truly alledg'd. Nor for want of *hoc paratus*, &c. prout patet, &c.

**Misericordia.**

To be amended by the Court.

Criminal Cases excepted.

4 & 5 Ann. c. 16.

Statutes of Jeofails extended to Judgments by Confession, &c.

5 Geo. c. 13.

Writs of Error may be amended.

name of the Plaintiff or Defendant, Demandant or Tenant, Sum of Money, Day, Month or Year by the Clerk in any Bill, Declaration or Pleading, where the Right Name, Sur-name, same Day, Month or Year in any Writ, Plaint, Roll or Record preceding; or in the same Roll or Record where the Mistake is committed, is or are once truly alledg'd, whereunto the Plaintiff might have demurred and shewn the same for Cause; nor for want of the Averment of *hoc paratus est verificare*, or *hoc paratus est verificare per recordum*; or for not alledging *prout patet per Recordum*; or for that there is no right *Venire*, so as the Cause was try'd by a Jury of the proper County or Place; nor any Judgment after Verdict, Confession by *Cognovit Actionem*, or *Relicta verificatione* shall be revers'd for want of *Misericordia* or *Capiatur*; or by reason that a *Capiatur* is enter'd for a *Misericordia* or a *Misericordia* for a *Capiatur*; nor for that *Ideo concessum est per Curiam* is enter'd for *Ideo consideratum est per Curiam*, nor for that the increase of Costs after a Verdict, or upon Nonsuit in Replevin, are not enter'd, to be at the Request of the Party for whom the Judgment was given; or for that the Costs are not enter'd to be by the Consent of the Plaintiff; but all such Defects and other Matters of like Nature not being against the Right of the Matter of the Suit, or whereby the Issue or Trial are alter'd, shall be amended by the Judges of the Courts where such Judgments are given, or the Record is renew'd by Writ of Error. Stat. 16 & 17 Car. 2. cap. 8.

Provided that this Act shall not extend to any Writ, Declaration, or Suit of Appeal of Felony or Murder, or to any Indictment or Presentment of Felony, Murder or Treason, or any Process upon any of them, nor to any Writ, Bill, Action, or Information upon any penal Statute. Ibid. This Act made perpetual by 22 & 23 Car. 2. cap. 4.

All Statutes of Jeofails shall extend to Judgments enter'd upon Confession *nihil dicit* or *non sum informatus* in any Court of Record; and no such Judgments shall be revers'd, nor any Judgment upon any Writ of Enquiry of Damages executed thereon, be stay'd or revers'd, for any Imperfection, Omission, Defect, or Thing which would have been aided or cured by the said Statutes of Jeofails, if a Verdict had been given in the Action, so as there be an original Writ and Warrants of Attorney duly fil'd. Stat. 4 & 5 Ann. c. 16.

All Writs of Error wherein there shall be any variance from the original Record, or other defect, shall be amended and made agreeable to such Record by the Court where

where such Writ is returnable, and where any Verdict shall Judgment given in any Action, Suit, Bill, Plaint or Demand, in shall not be any of the Courts at *Westminster*, or other Court of Re- stay'd or re- rd in *England* or *Wales*, the Judgment shall not be stay'd vers'd for de- revers'd for any defect in Form or Substance in any Bill, fects in Form Writ original or judicial, or for any variance in such or Substance Writs from the Declaration, or other Proceedings. *Stat.* in any Bill or *Geo. c. 13.* Writ, or for

Provided that this Act do not extend to any Appeal of variance. Felony or Murder, or to any Process upon any Indictment, Saving for Presentment, or Information for any Offence or Misde- Criminal meanor whatever. *Ibid.* Matters.

## READINGS.

Jeofail is when the Parties to any Suit in plea- Jeofail what. ing have proceeded so far that they have join'd Issue, which shall be tried or is tried by a Jury or Inquest; and this Pleading or Issue is so badly headed or join'd, that it will be Error if they proceed: Then some of the said Parties may by their Council shew it to the Court as well after Verdict given and before Judgment as before the Jury be charg'd; the shewing of which Defects was often when the Jury came into the Court to try the Issue: Then the Council which shew'd it said, This Inquest ye ought not to take; and if after Verdict, then he said, To Judgment you ought not to go. Therefore for avoiding the frequent Delays in Suits by such Suggestions, the aforesaid Statutes were made. *Terms of Law.*

Where there is a *Latin* Word which is falsly Where Words Englished in any Declaration or Pleadings, the that are not English Word shall be adjudg'd void, and the good Latin Latin Word shall stand; and where it is not with an *Anglice* will do. Latin, yet if it is significant, and has the Coun- glance will do. tinuance of Latin by adding an *Anglice* to it, it is good. As *Velvetum*, *anglice* Velvet; *Operimentum*, *anglice* a Rug, &c. But where senseless Senseless Words which signify nothing are us'd in a De- Words rejected in Plead- clamation, they are to be rejected, yet they shall not ings.



not hurt the Declaration if it be good without them. 10 Co. 133.

Where the Issue is not duly join'd, it is not help'd by the Statutes of Jeoffails.

If the Plaintiff declares upon a promise to find the Plaintiff his Wife and two Servants with Meat and Drink for three Years upon request, and the Defendant pleads that he promis'd to find the Plaintiff and his Wife with Meat; &c. *absque hoc* that he promis'd to find, &c. for two Servants, &c. and the Plaintiff replies that he did promise to find, &c. for three Years next following & *hoc petit*, &c. And thereupon a Verdict is found for the Plaintiff, yet he shall not have Judgment, for the promise in the Replication is not the same with that in the Declaration, which was travers'd by the Defendant, and so there is no Issue join'd, and therefore 'tis not help'd by the Statute. *Mich. 19 & 20 Eliz.* between *Kirlee* and *Lees*. 3 *Leon.* 66. adjudg'd upon a Motion in arrest of Judgment.

Another Instance.

If in Debt upon a Bond condition'd for the payment of 105 l. at a certain Day and Place the Defendant pleads that at the Day and Place he paid *prædict.* 100 l. *quas solvisse debuit secundum formam & effectum conditionis*; and the Plaintiff replies, *quod non solvit prædict.* 105 l. &c. and a Verdict is found *quod non solvit* the said 105 l. yet the Plaintiff shall not have Judgment for *prædict.* 100 l. shall not be intended the 105 l. And so they meet not, and there is no Issue. *Mich. 18 Jac.* between *Sindbanck* and *Turpin*. *Cro. Jac.* 585. Adjudg'd upon a Writ of Error and the first Judgment revers'd accordingly.

But the Plaintiff shall not avoid a Verdict by an Exception to his own Replication.

If in a *Scire facias* upon a Judgment against the Administratrix of J. S. the Defendant pleads that the said J. S. made B. within Age his Executor, and that Administration *durante minore etate* of the said B. was committed to the Defendant, and that such a Day the said B. attained the Age of Seventeen, and then refus'd to be Executor, &c. and that when the said B. attain'd his said Age, the Defendant had fully administrated &c. And the Plaintiff replies that at the time the said B. came to his said Age, *devastavit* &c.

*per sa bona, &c.* and the Defendant rejoins *quod sa non devastavit, &c.* and thereupon Issue was join'd and found for the Defendant, she shall have Judgment, for the Devastation must be intended by the Administratrix, and the Plaintiff shall not void the Verdict by an Exception to his own Replication. *Mich. 3 Car. between Oxford and Rivet. Cro. Car. 56, 66. by Richardson, Hutton and Harvey contra Yale and Cro. who held there was no issue, and so the Verdict void, and not aided by the Statute of Jeofails.*

If in Debt upon a Bond condition'd for the payment of 8 l. at a certain Day, the Defendant pleads payment at the Day & *de hoc ponit, &c.* and thereupon Issue is join'd, and a Verdict for the Plaintiff; though here is no negative, yet because the Plaintiff hath join'd with him, and the Jury hath found the Money was not paid, 'tis well enough, and aided by the Statute. *Trin. 9 Car. between Parker and Taylor. Cro. Car. 231, adjudg'd.*

If in an Assumpsit for Wares sold, the Defendant pleads *quod tempore quo, &c.* he was an Infant, and the Plaintiff replies that they were necessities *Et hoc petit quod inquiretur, &c.* And thereupon Issue is join'd, and a Verdict found for the Plaintiff, he shall have Judgment; for the matter which is the point of the Action is found by the Verdict. *Mich. 19 Car. 2. between Burton and Chapman. 1 Syd. 341, 342. adjudg'd.*

But if in Trespass the Defendant pleads in Bar, and the Plaintiff replies *de injuria sua propria*, but does not say *absque tali causa*, and thereupon Issue is join'd, and a Verdict for the Plaintiff, he shall not have Judgment, for the Bar is now answered. *Mich. 19 Car. 2. 1 Syd. 341. per Curiam.*

If in an Assumpsit, the Defendant pleads not guilty, and thereupon Issue is join'd and found for the Plaintiff, he shall have Judgment, though this is an improper Issue in this Action, yet because there is a Deceit alledg'd, not guilty is an Answer hereto, and 'tis but an Issue mis-join'd, which is aided by the Statute. *Pasch. 38. between Corbett and Brown. Cro. Eliz. 470. adjudg'd.* If

If the Matter which is the Point of the Action is found, 'tis sufficient.

Not guilty pleaded to an Assumpsit, and held good.

Point in Issue  
found suffici-  
ent.

If in Debt against *A.* as Executor of *B.* the Defendant pleads that *B.* died Intestate, and that Administration of his Goods was committed to *C.* and the Plaintiff replies, that before the said Administration granted, divers Goods, &c. came to the Hands of the Defendant, which as Executor to the said *B.* *Administravit seu aliter ad usum suum proprium disposuit & convertit, &c.* And thereupon in the disjunctive, Issue is join'd and found for the Plaintiff, he shall have Judgment: for the point in Issue is directly found, and so it is within the Statute; and this also is no improper Issue, for whether he administred or converted to his own Use, both must be as Executor. *Trin. 12 Jac.* between *Keble* and *Osbaston.* *Hob. 49.* adjudg'd.

Confus'd  
Pleading  
help'd by the  
Statute.

If in Replevin the Defendant avows for Damage Feasant, and the Plaintiff replies, that he was seisd in Fee of a Messuage and of certain Land, and that *J. S.* was seisd of another Messuage and Land, and that they two, and all those whose Estate, &c. had Common, &c. in the Place where, &c. and conveys to himself the other Messuage and Lands for Years, and so justifies, &c. and the Defendant traverses the Prescription, and it is found for the Plaintiff, though the Prescription thus confus'd for several is grossly faulty, and the Issue thereupon confus'd, yet after Verdict it is salv'd by the Statutes. Between *Stukely* and *Underhill.* *Hob. 112.* adjudg'd.

Unformal Issue  
help'd.

If in an Action of Covenant the Plaintiff assigns a Breach that the Defendant was not seisd in Fee *Et sic infregit Conventionem*, and the Defendant pleads *Non infregit Conventionem*, and thereupon Issue is join'd, and a Verdict for the Plaintiff, he shall have Judgment, for this is but an unformal Issue. *Trin. 17 Car. 2.* between *Walsingham* and *Combe.* *1 Syd. 289.* adjudg'd upon a Motion in Arrest of Judgment.

Verdict out  
of the Com-  
pass of the  
Issue.

If in Trespass for Battery, the Defendant justifies and conveys to himself an Estate by Copy in part of the Manor of *D.* whereof *J. S.* is seisd, &c. and that the Plaintiff came thereupon, and the Defendant laid his Hands *molliter, &c.* and the



the Plaintiff replies, and conveys to himself an Estate by Copy in another part of the said Manor, and then lays that the said *J. S. &c.* Lord of the said Manor for himself and his Tenants had a Way over the Defendant's Piece, and thereupon Issue is join'd and found for the Plaintiff, yet he shall not have Judgment, because here is no Issue or thing possible. *Hill. 13 Jac.* between *Tasker and Salter. Hob. 112, 113.* adjudg'd. And so *per Hobart* if they had found a special Verdict that the Custom had been for the Way, as it should have been pleaded *Et si sic, &c.* for the special Matter of the Custom would not bear the Issue as it is taken upon a Prescription void in Law; and so upon the Matter it would be a Verdict without an Issue, and out of the Compass of the Issue.

If in Trespass Issue is taken that the Prebend of *A.* and all his Predecessors, *&c.* had us'd time out of Mind to keep a Shepherd for the better keeping together their Sheep feeding in the said Pasture from the Sheep of *J. Earl of S.* and the Issue is found for the Plaintiff accordingly, tho' it is senceless and impossible that the Sheep of the Prebend, *&c.* time out of Mind could be kept from the Sheep of the Earl of *S.* being one Man's Life, yet the Plaintiff shall have Judgment, for the Substance of the Issue is keeping of the Sheep of the Prebend, *&c.* and the other part is but a Consequence thereof, that thereby they were kept from the Sheep of the said Earl. *Trin. 14 Jac.* between *Napper and Jasper. Hob. 117.* adjudg'd.

Substance of the Issue found, tho' part of it senceless, held sufficient.

In Debt upon a Bond against an Administrator brought in *Hill. Term. 22 Jac.* the Defendant imparl'd, and in *Easter Term, 1 Car.* the Defendant pleaded a Judgment upon a Bond dated *Anno quinto Regis nunc*, where it should have been *Regis Jac.* and that he had not Assets *ultra* to satisfy that Judgment, and thereupon the Plaintiff join'd Issue that the said Recovery was by Fraud and Covin, and it was found for the Plaintiff, tho' it was impossible there could be a Recovery *Anno quinto Regis Caroli*, which was not then come,

Issue impossible, and yet the Verdict held to be good.

yet the Plaintiff having a good Declaration had Judgment. *Hill. 22 Jac. between Knight and Harvey, Cro. Car. 18. adjudg'd.*

If in Debt upon an Obligation condition'd for the payment of 100 *l.* upon the 31st Day of *September* following, the Defendant pleads payment the said 31st Day according to the Condition, and thereupon Issue is joined, and found that the Money was not paid upon the said Day, the Plaintiff shall have Judgment; for though the Issue is upon an Impossibility, there being no such Day, yet the Jury finding it not paid at the Day, or any time before, in effect find it was never paid, which is a good Verdict. *Trin. 3 Car. between Purchase and Jegon. Cro. Car. 55. adjudg'd upon a Writ of Error, and the first Judgment affirm'd accordingly.*

Unapt Issue help'd by the Statutes.

If in Replevin the Defendant avows for Rent, for that *A.* was seisd in Fee, and took *B.* to Husband, and had issue *C.* and died; and *B.* being Tenant by courtesy, the Reversion to *C.* in Fee, the said *C.* granted a Rent-Charge to the Defendant, and shews the Death of *B.* &c. and the Plaintiff says, that *A.* was seisd in Tail, and so conveys it to *C.* in Tail, who granted the Rent and died, and the Lands descended to the Wife of the Plaintiff as Heir in Tail, *absque hoc*, that *A.* was seisd in Fee, and thereupon they are at Issue, and it is found for the Defendant; he shall have Judgment, for admitting the Seisin of the Grantor only traversable, and that this is an unapt Issue, yet it is within the Statute, and help'd. *Mich. 2. Jac. between Pigot and Pigot. Cro. Jac. 44. adjudg'd, per totam Curiam.*

If in Debt upon a single Bill, the Defendant pleads payment without an Acquittance, and thereupon Issue is join'd, and found for the Plaintiff; he shall have Judgment, for the payment without an Acquittance is no Plea to a single Bill; yet because Issue was join'd upon an Affirmative and a Negative and a Verdict for the Plaintiff, he shall have Judgment. *Mich. 37 and 38. Eliz. Nichol's Case, 5 Co. 43. adjudg'd upon a Writ of*

of Error in *Com Scac'*, and the first Judgment affirm'd accordingly.

If in Debt upon a Bond condition'd for the payment of 60*l.* upon the 25<sup>th</sup> of *June*, the Defendant pleads payment of the said 60*l.* upon the 20<sup>th</sup> Day of *June*, *secundum formam & effectum Conditionis*, and thereupon Issue is join'd, and a Verdict found that he did not pay the said 60*l.* upon the 20<sup>th</sup> Day of *June*, the Plaintiff shall not have Judgment, for the Issue is taken *de hors*, the Matter of the Condition, and so void; and it might not be paid the 20<sup>th</sup>, and yet might be paid the 25<sup>th</sup>, *Hill. 13 Jac.* between *Holms* and *Brocket*, *Cro. Jac.* 435. adjudg'd; but it is there said if it had been found for the Defendant, *viz.* That the Money was paid the said 20<sup>th</sup> Day, perhaps the Verdict would have made it good.

Indictment.

**S**heriffs in their Tourns and in other Places where they have power to enquire of Trespasses, shall cause Inquests to be taken by twelve lawful Men at least, who shall put their Seals to such Inquisitions; and if they shall imprison any that have not been indicted by such Inquests, the Parties imprison'd shall have their Action against the Sheriff; and so of Bailiffs of Franchises. *Stat. 13 Ed. 1. cap. 13.* 13 Ed. 1. c. 13.  
Sheriffs not to  
imprison any  
till indicted.

Indictments in Sheriffs Tourns, or in Franchises, &c. shall be taken by Roll indented, whereof one Part shall remain with the Inditors, and the other with him that taketh the Inquest. *Stat. 1 Ed. 3. c. 17.* 1 Ed. 3. c. 17.  
Indictments  
in Tourns, to  
be by Roll in-  
dented.

If any Man be indicted of Felony before the Justices in their Sessions, to hear and determine, the Sheriff shall attach his Body by a *Capias*; and if the Sheriff return a *non est Inventus*, another *Capias* shall immediately issue, returnable three Weeks after, wherein it shall be compriz'd, that the Sheriff shall seize his Chattels and keep them till the return of the Writ; and if the Sheriff return a *non est Inventus*, the *Exigent* shall be awarded, and the Chattels forfeited; but if the Indictee yield himself, or be taken before the return of the second *Capias*, then the 25 Ed. 3. c. 14.  
Process to be  
awarded a-  
gainst those  
that are in-  
dicted of Fe-  
lony.



Goods and Chattels shall be saved. *Stat. 35 Ed. 3. cap. 14.*

28 Ed. 3. c. 9. Whereas Sheriffs by Virtue of Commissions and general Writs shall Writs granted to them, have made and taken divers Innot be direct-quests to cause People to be indicted at their Will, and ed to Sheriffs taken Fine and Ransome of them to their own Use, to indict any and deliver'd them without bringing them before the before them. King's Justices, it is accorded that no such Commissions or Writs shall henceforth be granted. *Stat. 28 Ed. 3. cap. 9.*

11 H. 4. c. 9. No Indictment shall henceforth be made but by In- Jurors to be-quests of the King's lawful liege People, return'd by She- return'd by- riffs or Bailiffs of Franchises, without any denomination Sheriffs. Bai- to the Sheriffs of the Names which by him shall be im- liffs, without-pannelled, except by the Sheriffs sworn Officers, &c. to direction of- whom it appertaineth to make the same. And any In- dictment made otherwise shall be void. *Stat. 11 H. 4. cap. 9.*

1 H. 5. c. 5. In every original Writ, in Actions Personal, Appeals, The Defen- and Indictments, in which the *Exigent* shall be awarded- andant's Addi- to the Names of the Defendants, shall be added their tion, Quality- Estate, or Degree, or Mystery, and the Towns, Ham- &c. to be ad- lts, or Places and Counties of which they be or were, ded in Indict- or be or were conversant; and if the said Additions be- ments. omitted in the said original Writs, Appeals or Indictments, and Outlawries be pronounc'd thereupon, they shall be void; and before the Outlawries pronounc'd, the said Writs and Indictments may be abated by the exception of the Parties, but surplussage of Addition shall not be pre- judicial, although the Writ vary from the Records and Deeds therein: But the Clerks of the Chancery shall not omit the said Additions, on pain of being fined by the Lord Chancellor. *Stat. 1 H. 5. c. 5.*

1 Ed. 4. c. 2. No Sheriff, Under Sheriff, Clerk, Bailiff, or Minister, Indictments by virtue of any Indictment or Presentment at their in Tourns, to Tourns or Law days, shall Attach, Arrest, or Imprison, be try'd be- or levy any Fines or Amerciaments on any Person so in- fore the Ju- dicted or presented, or take of any such Person any Fine- stices of Peace- or Ransome, but shall deliver all such Indictments or Pre- of the Coun- sentments taken before them in their Tourns or Law- ty. days, to the Justices of Peace at their next Sessions of the Peace, on pain of forfeiting 40 l. for every default; and the said Justices of Peace are authoriz'd to award Process upon all such Indictments and Presentments, as if they were taken before them; and also to arraign and deliver all such Persons so indicted and presented before the said Sheriffs, &c. And if the said Sheriffs, &c. do Arrest, Attach, or Imprison, or cause any Fine or Ran- some

Some to be taken, or levy any Amercement on any Person by colour of any Indictment or Presentment taken before them, before they have Process from the said Justices of Peace, or Estreats deliver'd out on the said Indictments or Presentments so deliver'd and presented to them, they shall forfeit 100 l. one Moiety to the Crown, and the other to the Party griev'd. *Stat. 1 Ed. 4. c. 2.*

Provided that this Statute shall not extend to the Sheriffs of the City of London, concerning Indictments or Presentments taken in the said City. *Ibid.*

Justices of Peace may at their Discretion take an Inquest, whereof every Man shall have Lands and Tenements of the Value of 40 s. *per Annum*, at least, to enquire of the concealment of other Inquests taken before them, or others of such Offences as are inquirable before Justices of the Peace, whereof complaint shall be made by the Bill; and if any such Concealment shall be found of any Inquest within the Year past, every Person of such Inquest shall be amerced for the said Concealments at the discretion of the said Justices in their open Sessions. *Stat. 3 H. 7. c. 1.*

3 H. 7. c. 1.  
Inquests  
charg'd to en-  
quire of the  
concealment  
of other In-  
quests.

Offenders  
amerced.

No Person who shall hereafter be indicted of any Offence, shall take advantage by Writ of Error, Plea, or otherwise, to avoid any such Indictment, for that the Words *Vi & Armis*, viz. *Baculis, Cultellis, Arcubus, & Sagittis*, or any of them shall be wanting, but the Indictment shall be good notwithstanding such Omission. *Stat. 37 H. 8. c. 8.*

37 H. 8. c. 8.  
Indictments  
good without  
the Words  
*Vi & Armis*.

After the 25th of March 1696. every Person accused and indicted of High Treason, whereby any corruption of Blood may be, or for Misprision of such Treason, shall have a true Copy of the whole Indictment, but not of the Names of the Witnesses deliver'd to him five Days at least, before his Tryal (to enable him to advise with his Attorney or Agent requiring the same, and paying the Officer his Fees, not exceeding five Shillings, for the Copy of every such Indictment. *Stat. 7 W. 3. cap. 3.*

And such Person shall be admitted to make his defence by Counsel, and make any Proof for his defence by lawful Witnesses upon Oath; and if he desire Counsel, the Court before whom such Prisoner is to be try'd, or some Judge of that Court, is hereby requir'd, upon his request, to assign him such Counsel, not exceeding two, as he shall desire, to whom such Counsel shall have free Access at all seasonable times. *Ibid.*

And no Person shall be indicted, tryed, or attainted of None to be High Treason, whereby any corruption of Blood may indicted but

by the Oaths  
of two Wit-  
nesses.

7 W. 3. c. 3.

happen, or of Misprision of such Treason, but by the Oaths of two lawful Witnesses, both of them to the same overt Act, or one of them to one, and the other of them to another overt Act of the same Treason, unless the Prisoner willingly in open Court confess the same, stand Mute, or refuse to plead, or in Cases of High Treason challenge above thirty five of the Jury. *Ibid.*

Provided that any Person indicted, as aforesaid, of any such Treason or Misprision of Treason, may be outlaw'd, and thereby attainted thereof; and in Cases of High Treason, where by Law the Party outlaw'd may come in and be try'd, he shall upon such Tryal have the benefit of this Act. *Ibid.*

What shall be  
deem'd two  
Witnesses.

And if two distinct Treasons shall be laid in one Indictment, one Witness to one of the said Treasons, and another Witness to another of the said Treasons, shall not be deem'd two Witnesses to the same Treason within the meaning of the Act. *Ibid.*

None to be  
indicted above  
3 Years after  
the Offence.

And from and after the said 25th of March, 1696. no Person shall be indicted, try'd, or prosecuted for such Treason, as aforesaid, or for Misprision of such Treason done after the said 25th of March, unless the Indictment be found by a Grandjury within three Years after the Treason or Offence committed. *Ibid.*

Except for  
Assassination.

Provided that Persons designing, endeavouring, or attempting any Assassination on the Body of the King by Poyson or otherwise, may be prosecuted at any time notwithstanding the aforesaid limitation. *Ibid.*

The Prisoner  
to have Co-  
pies of the Pa-  
nel two Days  
before the  
Tryal.

And Process  
for his Wit-  
nesses.

Evidence.

And every Person who shall be accused, indicted and try'd for such Treason, as aforesaid, or Misprision of such Treason, shall have Copies of the Panel of the Jurors to try them duely return'd by the Sheriff and duely deliver'd unto them two Days at least before the Tryal; and the Prisoner shall have the like Process, of the Court where he shall be tryed, to compel his Witnesses to appear, as is usually granted to compel Witnesses to appear against him. *Ibid.*

Exceptions to  
be made be-  
fore any Evi-  
dence given.

And no Evidence shall be given of any overt Act not expressly laid in the Indictment. *Ibid.*

Provided that no Indictment for the Offences aforesaid, shall be quash'd on Motion for miswriting misspelling, false or improper *Latin*, unless the Exception be made in the Court where such Tryal shall be, by the Prisoner or his Counsel assign'd, before any Evidence given in open Court upon such Indictment; nor shall any such miswriting, misspelling, false or improper *Latin*, after Conviction be any cause to stay or arrest Judgment; but a Judgment given upon such Indictment may be revers'd

upon



upon a Writ of Error in the same Manner (and no other) Writ of Error as if this Act had not been made. *Ibid.*

And whereas by Law, in Cases of Life, a Commoner shall be try'd by a Jury of twelve Freeholders, who must all agree before they can bring in a Verdict to acquit or condemn the Prisoner; but on the Tryals of Peers or Peereſſes, a major Vote is ſufficient.

It is enacted, That upon the Tryal of any Peer or All the Peers Peereſſes either for Treason or Miſprifion of Treason, to be ſum- all the Peers who have a Right to ſit and Vote in Par- mon'd on the liament, ſhall be duly ſummon'd twenty Days at leaſt be- Tryal of a fore the Tryal, and every Peer ſo ſummon'd and appear- Peer. ing, ſhall Vote in the Tryal, firſt taking the Oaths of Allegiance and Supremacy, requir'd by 1 W. & M. and ſubſcribing and repeating the Teſt enjoin'd by 30 Car. 2.

Provided that this Act ſhall not extend to Impeach- Impeachment ments, or other Proceedings in Parliament. *Ibid.*

Nor to the Treasons of counterfeiting the Coin, the Coin, &c. Great Seal, Privy Seal, Sign Manual, or Privy Signet. *Ibid.*

No Clerk of Aſſize, Clerk of the Peace, or other Offi- 10 & 11 W. 3. cer, ſhall demand, take, or receive, any Fee or Reward cap. 23. No of any Perſon bound by a Juſtice of Peace to give Evi- Fees to be dence againſt any Traytor or Felon, for the diſcharge of taken of Per- any Recognizance for ſuch Appearance; nor demand, or ſons bound receive more than 2 s. for drawing a Bill of Indictment over. againſt any ſuch Felon, on Pain of forfeiting 5 l. to the Fee of 2 s. for Party griev'd, with full Coſts of Suit. Stat. 10 & 11 W. drawing an 3. c. 23. Indictment,

And if any Clerk of Aſſize, Clerk of the Peace, Clerk of the Indictments, or other proper Officers, their Clerks or Deputies, draw any Bill defective, they ſhall draw new Bills gratis, or forfeit 5 l. with full Coſts; and all Forfeitures aforeſaid, ſhall be recover'd by him or them that will ſue for the ſame, by Action of Debt, Bill, &c. *Ibid.*

For the more effectual Tryal of any Peer of Great- 6 Ann. c. 23. Britain, who ſhall commit High Treason, Petit Treason, Peers to be in- Miſprifion of Treason or Felony in Scotland, Commiſſions diſtict in Scot- may iſſue under the Great Seal of Great-Britain, conſti- land, as in- tuting the Perſons therein mention'd Juſtices to enquire England, by the Oaths of good and lawful Men, of ſuch County of Scotland as ſhall be therein nam'd, of all Treasons, Miſprifions of Treason, Murders, and other Felonies committed in ſuch County by any Peer of Great-Britain, which Inquiſition ſhall be taken in the ſame manner as Indictments taken before Juſtices of Oyer and Terminer in any County of England, and ſhall be proceeded upon as Inquiſitions found before Juſtices of Oyer and Termi-

## INDICTMENT.

ner in *England*, where any Peer is indicted for any such Offence; and such Justices shall issue Precepts to the Sheriffs of the respective Counties of *Scotland*, to return such good and lawful Men as may be sufficient to enquire of the said Offences, and twelve or more of them so return'd, being sworn, shall be sufficient to make such Enquiry, and find any Indictment; and such Justices may impose a Fine upon the Sheriff who shall not summon a sufficient number of Jurors, to be levied by Process out of the Exchequer; and if any Person summon'd shall not appear, the Justices may in like manner impose a Fine upon him, to be levied as aforesaid. *Stat. 6 Ann. c. 23.*

## READINGS.

Indictment  
defin'd.

Indictment comes of the *French* Word *Indite*, and signifieth in Law an Accusation found by an Inquest of twelve or more upon their Oath, and the Accusation is called *Indictamentum*: And as the Appeal is ever the Suit of the Pearty, so the Indictment is always the Suit of the King, and as it were his Declaration. *1 Inst. 126.*

Presentment.

When such Accusation is found by a Grand-Jury without any Bill brought before them, and afterwards reduced to a form'd Indictment, it is called a Presentment; and when it is found by Jurors return'd to inquire of that particular Offence only which is indicted, it is properly call'd an Inquisition. *2 Hawk. 209.*

Inquisition.  
The grand  
Jury can't  
find part.

The grand Jury must either find *Billa vera*, or *Ignoramus* for the whole; for if they take upon them to find specially or conditionally, or that the Bill is true in part, and not for the rest, the whole is void, and the Party cannot be tryed upon it, but ought to be indicted a new. *Ibid.*

No Damages  
on an Indict-  
ment.  
And where  
Damages are  
given by Sta-  
tute an Acti-  
on must be  
brought for  
them.

The Party who prosecutes an Indictment is a good Witness to prove it; but no Damages can be given to the Party griev'd upon an Indictment or any other criminal Persecution: And where a Statute gives Damages, they cannot be recover'd on an Indictment grounded on such Statute, unless such method of recovering them be expressly given by it; but they must be sued for by an

Action

Action on the Statute in the Name of the Party griev'd; but the Court of King's Bench having the King's Privy Seal for that Purpose, may give to the Prosecutor the third part of the Fine on a Criminal Prosecution; and it is the usual Practice of that Court to induce the Defendant to make satisfaction to the Prosecutor for the Costs of the Prosecution, and the Damages sustain'd, to intimate their Intention of mitigating the Fine to the King on that Account. 2 Hawk. 210.

All capital Crimes whatsoever; and also all kinds of inferiour Crimes of a publick Nature, as Misprisions and all other Contempts, all Disturbances of the Peace, all Oppressions, and all other Misdemeanours whatsoever of a publicly evil Example against the Common Law may be indicted; but no Injuries of a private Nature, unless they some way concern the King: Also it seems to be a good general Ground, that wherever a Statute prohibits a Matter of publick Grievance to the Liberties or Security of the Subject, or commands a Matter of publick Convenience, as the repairing of the Common-Streets of a Town, an Offender against such Statute is punishable, not only at the Suit of the Party griev'd, but also by way of Indictment for his contempt of the Statute, unless such method of Proceeding do manifestly appear to be excluded by it; yet if the Party offending have been fin'd to the King in the Action brought by the Party, as it is said that he may in every Action for doing a thing prohibited by Statute, it seems questionable whether he may afterwards be indicted, because that would make him liable to a second Fine for the same Offence. Also if a Statute extend only to private Persons, or if it extend to all Persons in general, but chiefly concern Disputes of a private Nature, as those relating to Distresses made by Lords on their Tenants, it is said that Offences against such Statute will hardly bear an Indictment: Also where a Statute makes a new Offence, which was no way prohibited by the Common Law, and appoints a particular man-

No Indictment will lie for a private Damage.

Where a Party may be punish'd both by Action and Indictment.



No Indictment will lie where a Statute appoints another Procedure.

ner of Proceeding against the Offender, as by Commitment, Action of Debt, or Information, &c. without mentioning an Indictment, it seems to be settled at this Day that it will not maintain an Indictment, because the mentioning the other methods of Proceeding only, seems implicitly to exclude that of Indictment; yet it hath been adjudg'd, that if such a Statute give a Recovery by Action of Debt, Bill, Complaint, or Information, or otherwise, it authorizes a Proceeding by way of Indictment: Also where a Statute adds a farther Penalty to an Offence prohibited by the Common Law, there can be no doubt but that the Offender may still be indicted, if the Prosecutor think fit, at the Common Law; and if the Indictment for such Offence conclude *contra formam Statuti*, and it cannot be made good as an Indictment upon the Statute, it seems to be now settled that it may be maintain'd as an Indictment at Common Law. 2 Hawk. 210, 211.

Indictments to be found by 12 Men at least.

By the Common Law every Indictment must be found by twelve Men at the least, every one of which ought to be of the same County, and return'd by the Sheriff or other proper Officer, without the Nomination of any other Person whatsoever; and ought also to be a Freeman, and a lawful liege Subject, and consequently, neither under an Attainder of any Treason or Felony, nor a Villain, nor Alien, nor outlawed, whether for a criminal Matter, or as some say in a Personal Action; and from hence it seems clear, that if it appear by the Caption of an Indictment, or otherwise, that it was found by less than twelve, the Proceedings upon it will be erroneous: Also it seems that any one who is under a Prosecution for any Crime whatsoever, may by the Common Law, before he is indicted, challenge any of the Persons return'd on the Grand Jury, as being outlaw'd for Felony, &c. or Villains, or return'd at the Instance of a Prosecutor, or not return'd by the proper Officer, &c. 2 Hawk. 215.

Challenges.

And

And it seems that by the Common Law, if a Fact done in one County prove a Nuisance to another, it may be in either County:

Also by the Common Law, if one guilty of Felons where Larceny in one County, carry the Goods stoln indictable into another, he may be indicted in either.

No Periphrasis or Circumlocution whatsoever Indictments will supply those Words of Art which the Law not good hath appropriated for the description of the Offence; as *Murdravit* in an Indictment of Murder; *Cepit* in an Indictment of Larceny; *Mayhemavit* in an Indictment of Maim; *Felonice* in an Indictment of any Felony whatever; *Burgulariter*, or *Burgulariter*, or else *Burgalariter* in an Indictment of Burglary; *Proditorie* in an Indictment of Treason; *Contra ligeantiae suae debitum* in an Indictment of High Treason against the King's Person.

It is generally a good Rule in Indictments as The special well as Appeals, that the special manner of the whole Fact be set forth with such certainty that the Offence to be it may judicially appear to the Court that the Indictors have not gone upon insufficient Premises; and upon this ground it seems to be agreed, that an Indictment finding that a Person hath feloniously broken Prison, without shewing the Cause of his Imprisonment, &c. by which it may appear that it was of such Nature that the breaking might amount to Felony, is insufficient: Also Indictments against Persons for refusing to be sworn Constables, after they had been *legitimo modo electi*, have been quash'd, for not shewing the manner of the Election, that it might appear to have been such as oblig'd the Defendants to have undertaken the Office: Also it hath been adjudg'd, that an Indictment of Burglary is insufficient without the Word *Noctanter*: Also it seems to be agreed, that an Indictment charging a Man with a Nuisance in respect of a Fact which is lawful in itself, as the erecting of an Inn, &c. and only becomes unlawful from particular Circumstances, is insufficient, unless it set forth some Circumstances which make it unlawful; but it is said

said that this is needless where the Thing indicted is unlawful in its own Nature, as the keeping of a Bawdy House, &c. Also it hath been adjudg'd, that an Indictment for traiterously coining Alkæmy like to the King's Money, without shewing what Money is insufficient, of which this seems to be the plainest Reason, that it appears not whether it were made like to the King's Gold or Silver Coin, or only like to that in Brass or Copper, &c. and if it were made like that of the latter kind only, it seems that the Offence could not amount to Treason: Also it seems that an Indictment of Perjury, not shewing in what Manner, and in what Court the false Oath was taken, is insufficient; because for what appears it might have been extrajudicial, &c. Also it seems clear, that it is necessary both in Indictments and Appeals of Maihem and Murder, to set forth particularly in what Manner the Hurt was given; and that an Omission thereof is not holpen by a general Conclusion, that the Defendant *sic Felonice Mayhemavit*, or *Murdravit*, &c. 2 Hawk. 225.

Indictments  
insufficient  
that only  
charge Men  
in general  
Terms.

Regularly every Indictment must either charge a Man with some particular Offence, or else with several of such Offences particularly and certainly express'd, and not with being an Offender in general; for no one can well know what Defence to make to a Charge so uncertain, or to plead it either in Bar or Abatement of a subsequent Prosecution; neither can it appear that the Facts given in Evidence against a Defendant on such a general Accusation, are the same of which the Indictor hath accused him; neither can it judicially appear to the Court what Punishment is proper for an Offence so loosely expressed; and upon this Ground it hath been adjudg'd, that an Indictment is insufficient which only charges a Man in general with having spoken divers false and scandalous Words against J. S. being Mayor of such a Place, or with being a common Defamer, Vexor, and Oppressor of many Men, or with being a common Disturber of the Peace, and

having



having stirr'd up divers Quarrels, as well among his Neighbours, as others of the King's Subjects at such a Place, to the great loss and disturbance of his Neighbours aforesaid, and other the King's Subjects, &c. or with being a common Oppressor and Disturber of the Peace, or with having been and still continuing to be a Man of evil Behaviour, or with being a common Deceiver of the King's People, or with being a common Publisher of the King's Secrets, and of his own, and of divers other Persons impannell'd together with him, to enquire for the Body of the County, of divers Felonies against his Oath, &c. or with being a common Forestaller, or with being a common Thief, or with being a common Evil-doer, or with being a common Champertor, or with being a common Conspirator, and such like.  
2 Hawk. 226.

Yet it hath been adjudg'd that a Man may be generally indicted as a common Barretor against the Form of the Statute, and against the Peace, without shewing any of the particular Facts in the Indictment by which he appears to have been so: For Barrettry is an Offence of a complicated Nature, consisting in the Repetition of divers Acts in disturbance of the common Peace, all of which it would be prolix to enumerate in the Indictment; and therefore Experience hath settled it to be sufficient to charge a Man generally as a common Barretor (which is a Word of Art appropriated to this Purpose) and before the Tryal to give the Defendant a Note of the particular Matters which you intend to prove against him: Also it is holden, that there is no need to name any particular Place where the Defendant was a Barretor, because he shall be suppos'd to have been guilty in divers Places, and the *Venire* is most proper from the Body of the County: Also it is said, that there is no need in the conclusion of such an Indictment to lay the Offence *ad Nocummentum omnium Ligeorum, &c.* but that *Diversorum* is sufficient in such an Indictment, as well as in an Indictment of a common Scold, &c. because

cause it appears from the nature of the Thing that it could not but be a common Nuisance: Also it seems to be agreed, that an Indictment against one as a common Scold is good, without setting out the Particulars, for the same Reasons that such Indictment of Barrettry is good. 2 Hawk. 226.

Charge must be positive, and not by way of recital.

The Charge must be laid positively, and not by way of Recital, as with a *quod cum, &c.* And the want of a direct Allegation of any Thing material in the description of the Substance, Nature, or Manner of the Crime, cannot be supplied by any Intendment or Implication whatsoever; and upon this Ground it seems to be generally holden, that an Indictment of Death having the Words *Felonice Murdravit, &c.* cannot amount to an Indictment of Murder without the Words *ex Malitia precogitata*; and yet by the Word *Murdravit*, it expressly charges the Party with Murder; and it is impossible that there could be a Murder and no Malice prepense: Also it seems to be generally agreed, that no Indictment of Death can be good without an express Allegation that the Deceased both receiv'd the Hurt which is laid as the Cause of his Death, and also that he died of the Hurt so receiv'd; and the want thereof cannot be made good by any Implication whatsoever. 2 Hawk. 227.

And it is a certain Rule, that where one material part of an Indictment is repugnant to another, the whole is void.

A certain Time to be laid.

But not necessary to be prov'd.

No Indictment can be good without precisely shewing a certain Year and Day of the material Facts alledg'd in it; but where the Indictment charges a Man with a bear Omission, as the not scouring a Ditch, &c. it need not shew any Time; but it is agreed, that a mistake in not laying an Offence on the very same Day on which it is afterwards prov'd upon the Tryal, is not material upon Evidence.

Where several are present and abet a Fact, and one only actually does it, an Indictment may in the same manner as an Appeal, either lay it generally

nerally as done by them all, or specially, as done only by the one, and abetted by the rest; but it hath been resolv'd, that if an Indictment barely charge a Man with having been present when a Murder was committed, it is void; because a Man may be innocently present, and shall not be presum'd to have been a Party, where no Circumstance is found that makes him so. 2 Hawk. 229.

There is no necessity in any Indictment or Information on a publick Statute to recite such Statute, whether the Offence be such only because prohibited, or be an evil in its own Nature, and whether it be prohibited by more than one Statute, or by one only; for the Judges are bound *ex Officio*, to take notice of all publick Statutes; and where there are more than one by which an Indictment or Information may be maintain'd, they will go upon that which is most for the King's advantage. 2 Hawk. 245.

Notwithstanding there be no necessity to recite a publick Statute, yet if the Prosecutor take upon him to do it, and materially vary from a substantial part of the Purview of the Statute, and conclude *contra formam Statuti predicti*, he viciates the Indictment, because it judicially appears to the Court that there is no such foundation for the Prosecution, as that whereon it is expressly grounded; as where in an Indictment with such a Conclusion on the Statutes, which prohibit Entries with strong Hand, the Word *Vi* is put for *Manu forti*, or where the Word *Nuncia* is put for *Mendacia*, in such an Indictment on the Statutes against the tellers of Lies of great Men; or where the Verb in a Statute, which expresses the principal Act wherein the Offence consists, is express'd in such an Indictment, on such a Statute, by a Word which is neither classical nor legal *Latin*; or where a Statute in describing the Courts wherein it prohibits Persons to bring Actions in others Names without their Privy, calls them Courts wherein Pleas are holden in Actions personal, &c. and you



## INDICTMENT.

you in reciting it in such an Indictment; call them Courts wherein Pleas are holden in any Actions. 2 *Hawk.* 246.

By the Common Law, the Court may in discretion quash any Indictment for any such insufficiency, either in the Caption or Body of it; as will make any Judgment whatsoever given upon any part of it against the Defendant erroneous; yet it seems that Judges are in no Case bound *ex debito Justitiæ* to quash an Indictment, but may oblige the Defendant either to plead or demur to it; and this they generally do where it is for a Crime of an enormous or publick Nature, as Perjury, Forgery; Sedition, Nuisances in the Highways, and other Offences of the like Nature; neither will the Court quash an Indictment remov'd by *Certiorari*, if a Recognizance for the Tryal of it hath been forfeited. 2 *Hawk.* 258.

*Charnock* was indicted, for that he the 10th of February 9 *W. 3.* & *diversis aliis diebus & vicibus tam antea quam postea*, in the Parish of St. Clements Danes, did traiterously conspire to kill the King. *Et per Holt C. J.* Evidence may be given before or after the Time alledg'd in the Indictment. Evidence given of the Fact before or after the Time laid.

*First*, Because it is only a Circumstance, and of Form, some Day must be alledg'd, but it is not material.

*Secondly*, The Indictment lays it to be at divers Days and Times, as well before as after, and thereby comprehends what was done last Year as well as this; and as the Evidence may be of Matters before that Time, so it may be of Matters also at any Time after the Time specified in the Indictment, provided that it be not after the Time the Indictment was found; neither is the Evidence tied up to the Place, for it may be of any Place, provided it be not out of the County; and so it is of all criminal Cases. *Charnock's Case.* 1 *Salk.* 288.

Indict.

Indictment for making or causing to be made a false Bill of Loading in the disjunctive; and though forging or causing to be forg'd, is Forgery, yet the Court thought the Indictment not good in the disjunctive. *Dominus Rex v. Stocker.* Mich. 7 W. 3. B. R. 1 Salk. 371.

Indictment on the Statute of *Westm. 2. cap. 4.* for pulling down Hedges: The Defendant mov'd to quash it, which *Holt C. J.* refus'd, saying he might as well move to quash a Declaration without pleading to it. Afterwards *Trin. 11.* on a like Motion, the Chief Justice said, we never quash Indictments for Forgery, Perjury, Subornation, or any Crime concerning the Highways. In *Trin. 10. W. 3. B. R.* on a like Motion, the Court said they would not quash an Indictment for inticing away another's Servant upon Motion, but he must Plead, Demur, or move in Arrest of Judgment: So of all Crimes that are heinous. So it was held *Pas. 4 Ann. Dom. Regina v. the Inhabitants of Belton Hill, 8 W. 3. B. R. 1 Salk. 372.*

Where the Court will not quash an Indictment:

Indictment was remov'd by *Certiorari*, and upon the awarding the *Certiorari* a Recognizance taken, and now *Salkeld* mov'd to quash the Indictment; but it appearing that the Recognizance was forfeited; the Court would not hear the Motion. *Holt C. J.* said, the Practice was, or ought to be now alter'd by the late Act; before that, the Defendant came soon enough at any Time to move to quash, but should not be allow'd to do it now after his Recognizance forfeited by not carrying the Record down to the next Assizes to be tried; and for the same Reason the Court refus'd to let him take any Exceptions either to the *Certiorari* or Return. 1 Salk. 380.

Indictment for that a poor Boy being put out Apprentice to the Defendant pursuant to the Statute, he *Vi & Armis* refus'd to provide for him. *Et per Cur'.* Since we allow the Justices Power to put out Apprentices, we must allow an Indictment for disobedience, either in case of not re-

ceiving, turning off, or not providing for such Apprentice as the Law requires; and the *Vi & Armis* is surplusage. *Domina Regina v. Gould*, *Pas.* 3 *Ann. B. R.* 1 *Salk.* 381.

2 Indictments  
at one time.

*Per Curiam*, If there be two Indictments against *H.* for the same thing, as if one be found by a Coroner's Inquest, and another by the Grand-Jury, and *H.* is acquitted upon one, yet he must still be try'd upon the other, to which he may plead the former Acquittal; but the usage of the *Old Baily* is, and indeed so is the fairest Course to try him on both Indictments at once. *Domina Regina v. Culliford*, *Mich.* 3 *Ann. B. R.* 1 *Salk.* 382.

Wife indictable for keeping an ill House.

Indictment against Husband and Wife for keeping *Communi Domum senocinii*, Anglice, *A common Bawdy-house*: Upon the Motion to quash it, the Objection was, that the keeping a House could not be the keeping of the Wife, any more than it is the keeping of the Servant; but to this 'twas answer'd and resolv'd by the Court, that the Wife may be guilty and commit a Crime with her Husband, and that Crime is joint and several.

Husband and Wife may commit a Trespass, Murder, Treason. In Dr. *Hussey's* Case Baron and Feme were indicted for Ravishment of Ward, and the Wife found Guilty. *Hob.* 95.

Keeping a Bawdy-house is a common Nuisance, and the Indictment for keeping, is a Charge against them for this Nuisance: The keeping is not to be understood of having or renting in point of Property, for in that Sense the Wife cannot keep it; but the keeping here, is the governing and manageing a House in such a disorderly Manner as to be a Nuisance, and the Wife may have a Share in the Management or Government of a disorderly House, as well as the Husband. 2 *Roll.* 345. 3 *Keb.* 34. 1 *Keb.* 575. cited *Domina Regina v. Williams*, *Mich.* 10 *Ann. B. R.* 1 *Salk.* 384.

Infoꝛ.



## Information.

**E**VERY Informer upon a penal Statute shall exhibit 18 *Eliz. c. 5.* his Suit in proper Person, and prosecute the same by Informer to himself, or his Attorney by Information or original Acti- prosecute in on only, without using a Deputy: And a special Note Person. shall be made of the Day and Year of exhibiting the In- A Note to be formation, and the same shall be taken to be of Record made of the from that time, and not before; and until then no Pro- Day of exhibi- cess shall be indorsed; and upon the Process shall be in- biting the In- dors'd, as well the Informer's Name as the Statute upon formation, which the Information is brought, upon pain of 40 s. to and on what be paid by the Clerk making out Process in other Man- Statute found- ner; to be divided between the Crown and the Partyed.

griev'd. 18 *Eliz. c. 5.*

No Jury shall be compell'd to appear in any of the Juries not Courts at *Westminster*, for the Tryal of an Issue in such compell'd to Suit where the Offence was committed above thirty Miles appear at from *Westminster*, except the Attorney General for reason- *Westminster*. able Cause require that the same be try'd at Bar, which shall be indors'd on the *Distringas*, that the Sheriff may signify the same to the Jurors. *Ibid.*

No Informer or Plaintiff shall compound with the De- No Informer fendant without the consent of the Court; and if the to compound Informer shall delay his Suit, Discontinue, be Nonsuit, or Offences. a Verdict pass against him, he shall pay the Defendant his Costs; for which the Court shall award Execution. *Ibid.*

Every Informer offending against this Statute, shall be Penalty of arrest in the Pillory two Hours in the next Market Town, Informers dis- and be disabled to prosecute upon any penal Statute, and obeying this forfeit ten Pounds; to be divided between the Crown and Statute. the Party griev'd; to be recover'd in the Courts at *Westminster*: And Justices of Assize, and Justices of Peace in their Quarter Sessions, are empower'd to hear and determine all Offences against this Act. *Ibid.*

Provided that it shall be lawful for any Person griev'd, Exceptions as by Maintenance, Champerty, buying of Titles, or Em- to several Off- bracery, to prosecute their Suits as heretofore. *Ibid.* fences.

Nor shall this Statute restrain any Person, Body Poli- Not to ex- tick or Corporate, to whom any Forfeiture, Penalty, or tend to Per- Suit is specially given by any Statute, (and not generally sons to whom to any Person that will sue) but such Person, &c. to a Penalty is, whom any such is specially given may prosecute as hereto- specially fore. *Ibid.* given;

Nor to Officers of Record.

Provided also that this Act shall not extend to any Officers of Record, who in respect of their Offices use to exhibit Informations, or sue upon penal Laws; nor to any Officers informing or prosecuting for Matters concerning their Offices only. *Ibid.*

29 Eliz. c. 5.

If any Person shall be sued or inform'd against upon any penal Law in the Courts of *Westminster*, where such Persons areailable by Law, such Person may at the time appointed for his appearance in the first Process appear by Attorney, and shall not be compell'd to put in Bail. *Stat. 29 Eliz. c. 5.*

*Ibid.* If any Person shall be sued or inform'd against upon any penal Law in the Courts of *Westminster*, where such Persons areailable by Law, such Person may at the time appointed for his appearance in the first Process appear by Attorney, and shall not be compell'd to put in Bail. *Stat. 29 Eliz. c. 5.*

31 Eliz. c. 5.

In every Declaration or Information upon any penal Statute, the Offence shall not be laid to be done in any other County but where the Offence was actually done; and if the Defendant traverses and disproves that Point, on Statutes to the Plaintiff shall be barr'd. *Stat. 31 Eliz. c. 5.*

*Ibid.* In every Declaration or Information upon any penal Statute, the Offence shall not be laid to be done in any other County but where the Offence was actually done; and if the Defendant traverses and disproves that Point, on Statutes to the Plaintiff shall be barr'd. *Stat. 31 Eliz. c. 5.*

21 Jac. 1. c. 4.

Or the Defendant shall be found not guilty.

*Ibid.* All Offences against a penal Statute, for which a common Informer may ground an Action popular, Bill, Plaint, &c. before Justices of Assize, *Nisi Prius*, Oyer and Terminer, or of Goal Delivery, or before Justices of Peace in their Quarter Sessions, shall be prosecuted only in the County, &c. where the Offences shall be committed; and the Plaintiff, or Informer, if he shall not prove the Offence laid in the Information, Action, or Suit, was committed in that County, the Defendant shall be found not guilty. *Stat. 21 Jac. 1. c. 4.*

Oath that the Offence was committed in the proper County.

*Ibid.* No Information, &c. shall be receiv'd or fil'd, unless the Informer make Oath that the Offence was committed in the same County, and within a Year before the Suit commenced. *Ibid.*

Informations for several Offences excepted.

*Ibid.* The Defendant may plead the general Issue, and give the special Matter in Evidence. *Ibid.*

4 & 5 W. & M. c. 18. Informer to enter into a Recognizance of 20 l. to prosecute, &c.

*Ibid.* Provided that this Statute shall not extend to any Information for Recusancy, or not frequenting Divine Service, or for Maintenance, Champerty, or buying of Titles; nor concerning the concealing or defrauding the King of any Custom of Tonage or Poundage, Subsidy, Impost, or Prifage; or for transporting Gold, Silver, Ordnance, Powder, Shot, Munition, Wool, Woolfels, or Leather. *Ibid.*

*Ibid.* The Clerk of the Crown in the Court of Kings-Bench, shall not without express order of the said Court, exhibit, receive, or file any Information, for any Trespasses, Batteries, or other Misdemeanors; or issue any Process thereupon, before he shall have taken, or shall have deliver'd to him a Recognizance from the Person procuring such Information to be exhibited, with his addition to the Persons against whom such Information is to be exhibited,

hibited,

Invited in the penalty of 20*l*. effectually to prosecute such Information, and abide the Order of the Court, which Recognizance, the Clerk of the Crown or any Justice of Peace of the County, &c. where the Cause of such Information was, are hereby empower'd to take, and the Clerk of the Crown shall record and file a Memorandum thereof in some publick place in his Office. for all Persons to resort to without Fee. *Stat. 4 & 5 W. & M. cap. 18.*

And if the person against whom the Information is. Informer to shall appear and plead to issue, and the Prosecutor do not pay Costs if he at his own Costs within one Year after Issue join'd cause delay the pro- the same to be tried, or if a Verdict pass against him, or secution or a he cause a *Noli prosequi* to be entred, then the Court of Verdict pass *King's Bench* shall award the Defendant his Costs, unless against him, the Judge at the Trial shall certify in open Court upon the Record, that there was a reasonable Cause for exhibiting such Information. And if the Informer shall not within three Months after Costs tax'd, pay the Defendant his Costs, he shall have the Benefit of the said Recognizance to compel him thereto. *Id.*

And for the more easy and speedy reverfing Outlaw- Persons out- ries in the said Court, no person who shall be outlawed law'd not for any Cause (except Treason and Felony) shall be com- compellable to pell'd to appear in person in the said Court, to reverse appear in per- such Outlawry, but may appear by Attorney and reverse son to reverse the same without Bail in all Cases (except where special it, or give Bail, Bail shall be order'd by the said Court. *Id.* unless order'd

And if any person outlawed (except for Treason or Fe so to do by lony) in the said Court, shall be taken upon a *Capias ut-* the Court. *lagatum*, the Sheriff in all Cases where special Bail is not Defendant ta- requir'd, may take an Attorney's Engagement under his ken on a *Ca. ut.* Hand, to appear for the said Defendant and reverse the may give an Outlawry, and thereupon discharge him from such Ar- Appearance or rest; and in Cases where special Bail is required by the Bail as the said Court, the Sheriff shall take Bond with one sufficient Case requires, Surety in double the penalty for which special Bail is re- quir'd, and no more for his Appearance, &c. and after- wards discharge the said Defendant. *Id.*

And if any person taken upon a *Capias ut-lagatum*, shall After he not be able to find Sureties within the Return of the said shall be com- Writ, and be committed to Goal. when ever the said mitted to Pri- Prisoner shall find sufficient Security to the Sheriff for his son. Appearance, &c. at some Return in the then next Term, it shall be lawful for the Sheriff upon such Security taken, to discharge the said Prisoner. *Id.*

Provided that this Act do not extend to any other In- Extended on- formations, than such as are exhibited in the Name of his ly to Infor-



Attorney General or Master of the King's Bench. Majesty's Coroner or Attorney, in the Court of King's Bench (called the Master of the Crown Office.) *Ib.*  
 And upon the Demise of the King, all Pleas to Informations in the said Court shall stand without calling the Pleas to stand Defendants to plead again, unless they desire so to do, as they did on and request the same in Court within five Months after a Demise of such Demise. *Ib.*  
 the Crown.

9 A. c. 20. In- If any person shall usurp, intrude into, or unlawfully hold or execute the Office of Mayor, Bailiff, Portreeve, or other Office, in any Town Corporate or place in England or Wales, it shall be lawful for the proper Officer of the Court of King's Bench, Court of Sessions of the County Palatine, or the Court of the Grand Sessions in Wales, against Persons with the leave of the said respective Courts, to exhibit Informations in the nature of a *Quo Warranto*, at the Offices in Corporations. If any person desiring to prosecute, who shall be mention'd in such Informations to be the Relator against such Usurper, &c. and to proceed as usual. And if it appear that the right of divers Persons may properly be determin'd in one Information, the respective Courts may permit one such Information against several Persons in order to try their respective Rights, and the Defendants shall appear and plead, as of the same Term or Sessions the Information is fil'd, unless the Court give further time, and the Prosecutor shall proceed with all convenient Speed. *Stat. 9 A. c. 20.*

Judgment of Ouster and Fine against the Usurper, and Costs awarded.

The Relator to pay Costs if Judgment be against him.

And if the Defendant shall be found guilty of an Usurpation, &c. the said Courts respectively may as well give Judgment of Ouster, as fine such Defendants for their Usurpation, &c. and also give Judgment that the Relator recover his Costs. And if Judgment be given against the Relator, the Defendant shall have his Costs, to be levied by *Ca. sa. Fieri fac.* or *Elegit.* *Ib.*

And it is also enacted, that \* the Statute for the Amendment of the Law, and all Statutes of Jeofails, shall extend to Informations in the Nature of a *Quo Warranto.* *Ib.*

\* Statutes of Jeofails and Amendment of the Law, extended to such Informers.

## R E A D I N G S.

Information defin'd.

An Information for the King, is the same thing as a Declaration by a common person. It is not always brought by the King, or his Attorney, or the Clerk of the Crown Office, but frequently by some other person who informeth as well for the

the King, as for himself, upon the Breach of some penal Law or Statute.

Informations are either solely at the Suit of the King, or partly at the Suit of the King and partly at the Suit of the Party.

As to Informations at the Suit of the King, al- tho' it hath been held that the King shall put no one to answer for a Wrong done principally to another without Indictment or Presentment, but only for Wrongs done principally to himself, yet it is every Days practice to proceed by way of Information, either in the Name of the Attorney General, or of the Master of the Crown Office, for Offences of the former kind, as for Batteries, Cheats, seducing a young Man or Woman from their Parents in order to marry them against their Consent, or for any other wicked purpose, spiriting away a Child to the Plantations, rescuing Persons from legal Arrests, Perjuries, and Subornations thereof, Forgeries, Conspiracies, and other such like Crimes, done principally to a private person, as well as for Offences done principally to the King, as for Libels, seditious Words, Riots, False News, Extortions, Nuisances, (as in not repairing Highways, or obstructing them, or stopping a Common, River, &c.) Contempts, as in departing from the Parliament without the King's License, disobeying his Writs, uttering Money without his Authority, escaping from a legal Imprisonment on a Prosecution for a Contempt, neglecting to keep Watch and Ward, abusing the King's Commission to the Oppression of the Subject, making a Return to a Mandamus of Matters known to be false, and in general, any other Offences against the publick good, or against the first and obvious Principles of Justice and common Honesty. 2 Hawk. 260.

Informations at the Suit of the King.

Brought for Offences against the Publick.

Capital Crimes.

Difference between an Information and Indictment,

But such an Information will not lie for any capital Crime, or for Misprision of Treason. *Ib.* An Information differs from an Indictment, in that the one is found by the Oath of twelve Men, and the other is only the Allegation of the Officer who exhibits it; whatsoever Certainty is requi-

Certainty re-  
quir'd.

site in an Indictment, the same at least is necessary also in an Information, and consequently as all the material Parts of the Crime must be precisely found in the one, so must they be precisely alledg'd in the other, and not by way of Argument or Recital. 2 Hawk. 261.

Informations  
at the Suit of  
the King and  
of the Prose-  
cutor to  
whom part of  
the penalty is  
given.

An Information partly at the Suit of the King and partly at the Suit of the Party, is commonly call'd an Information *qui tam*, because the Informer prosecutes *tam pro Domino Rege quam pro seipso*; and these Informations will not lie on any Statute which prohibits a thing, as being an immediate Offence against the publick good in general, under a certain penalty, unless the whole or part of such penalty be expressly given to him who will sue for it, because otherwise it goes to the King, and nothing can be demanded by the Party. But where such Statute gives any part of such penalty to him who will sue for it by Action or Information, &c. any one may bring such Action or Information and lay his Demand *tam pro Domino Rege quam pro seipso*. Also where a Statute prohibits or commands a thing, the doing or omitting whereof is an immediate Damage to the Party, and also highly concerns the Publick, or the Honour of the King, or of his supreme Courts of Justice, as the Statutes against scandalizing of great Men, of Hue and Cry, and those that restrain certain Suits in the Civil or Canon Law Courts, or even in inferiour Common Law Courts, there the Party griev'd may, and it is holden by some, that he ought to bring his Action on such Statute *tam pro Domino Rege quam pro seipso*. 2 Hawk. 265.

Information  
good, if well  
laid as to any  
one Offence  
charg'd.

If an Information contain several Offences against a Statute, and be well laid as to some of them, but defective as to the rest, the Informer may have Judgment for so much as is well laid; as where the Words of the Statute are fully pursued in the Description of some of the Offences and not of others, or where some of the times that the Defendant hath offended against the Sta-

tute



ture are express'd with convenient Certainty, and others not. 2 Hawk. 266.

In the Construction of the 18 Eliz. cap. 5. it hath been adjudg'd, that no popular Action since this Statute, can be brought on a former Statute, either by Bill in the *King's Bench*, or by Plaint in an inferiour Court, but only by original Writ or Information, whether the Statute on which such Action is grounded inflict a penalty, generally without saying how it shall be recover'd, or expressly give a Recovery by Bill or Plaint, &c. (as that of the 4 & 5 Ph. & M. against making Kerseys without having serv'd an Apprenticeship, and that of 5 Eliz. cap. 4. against following any other Trade without having serv'd an Apprenticeship) Yet the contrary hath been since adjudg'd as to such former Statutes as expressly give a Recovery by Bill or Plaint. 2 Hawk. 267.

But no Suit by Bill or Plaint by a Party griev'd, suing upon a Clause either expressly or impliedly relating to himself only, is within the said Statute.

In the Construction of 31 Eliz. cap. 5. and the 21 Jac. 5. it hath been resolv'd, First, That if an Offence prohibited by any penal Statute, be also an Offence at Common Law, the prosecution of it as of an Offence at Common Law, is no way restrained by any of these Statutes. 2 Hawk. 272.

Secondly, That if a Suit on a penal Statute be brought after the time limitted, the Defendant needs not plead the Statute, but may take Advantage of it on the general Issue. *Ib.*

Thirdly, If an Information *tam quam* be brought after the Year on a penal Statute which gives one Moiety to the Informer and the other to the King, it is naught only as to the Informer, but good for the King. *Ib.*

Fourthly, That the Party griev'd is not within the Restraint of these Statutes, but may sue in the same manner as before. *Ib.*

After a Plea pleaded to an Indictment, Information, or Action, for any Crime whatsoever, under the Degree of Capital, the Defendant might

Defendant  
may appear by  
Attorney.

might always by the Favour of the Court, be permitted to appear by Attorney; also it seems, that generally the Court might always dispense with the personal Appearance of the Defendant, even before the Plea pleaded, except in such Cases wherein a personal Appearance is required by some Statute, as it is in *Præmunire*, &c. in which Cases it seems generally agreed, that an Appearance by Attorney cannot be admitted without some special Writ or Grant to that purpose, whether the Defendant be a Peer or Commoner. 2 *Hawk.* 273.

An Informer  
on a popular  
Statute to  
have no Costs.

One may be  
convicted and  
the rest ac-  
quitted.

And one may  
be convicted  
of less than is  
laid in the In-  
formation.

An Informer upon a popular Statute, shall never have Costs, unless they are expressly given by the Statute, but the Party griev'd in an Action on the Statute shall, where a certain penalty is given. *Ib.*

If an Offence against a Statute be of such a Nature that it may be committed by a single person without the Concurrence of any other, and several Persons be jointly charg'd in one Information for one Act done by them all against such Statute, one of them only may be found guilty, and the rest acquitted, because tho' the Words of the Information seem to import a joint Charge against all the Defendants, yet in Judgment of Law each of them is charg'd severally for his own Offence, which cannot but be several, whether the Act in the doing whereof it consisted, were done by one or more, and accordingly the Issue must be, that neither they nor any of them are guilty, and for the like Reasons if one be informed against for having offended against a Statute for more times or in a higher Degree than can be prov'd, as for not coming to Church during the space of ten Months, where he can be prov'd to have been absent but eight Months, &c. or for ingrossing one Thousand Quarters of Wheat where the Evidence amounts but to seven Hundred, he may be found guilty so far as the Evidence goes, and not guilty for the Residue; for such Offences are not in the Nature of entire Contracts which regularly must be fully prov'd in the same

same manner as they are alledg'd, but are in the Nature of Trespasses which it is sufficient to prove for any part. But if the Offence against a Statute consist in making a Contract contrary to the Purview of it, as in the Case of Usury, it is said, that if it be alledg'd as having been made by two, it must be so prov'd likewise, because it is a Rule of Law, that if Contracts be not proved as they are laid, they shall not be taken to be the same. 2 Hawk. 278.

In the Construction of the 4 & 5 W. & M. cap. 18. it is held, That this Statute extends to all Informations whatever, exhibited by the Master of the Crown Office; and it is said to be the general Practice of the Court, not to order an Information to be fil'd without first making a Rule for the person complain'd of to shew cause to the contrary, and if the Party shew a reasonable Cause against such Prosecution, the Court will not grant the Information. *Ib.*

Where the Information is tried at Bar, the Defendant shall have no Costs within this Statute of 4 & 5 W. & M. and if there be several Defendants and any one of them be found guilty, those that are acquitted can have no Costs within this Statute. *Ib.*

If a Man be outlaw'd by Process in an Information, and comes in and reverses the Outlawry, he must plead *Instante* to the Information. *Dom. Rex v. Hill. Mich. 7 W. 3. B. R. 1 Salk. 371.*

Outlawry on an Information.

A Motion was made to file an Information in Nature of a *Quo Warranto* against the Mayor and Aldermen of *Hertford*, to shew by what Authority they admitted Persons to be Freemen of the Corporation, who did not inhabit in the Borough. The Motion was pretended to be in Behalf of the Freemen, who by this Means were incroached upon. And an Information was granted, because it was a Question of Right, and there was no other way to try it, nor to redress the Parties concern'd. 1 Salk. 374.

Information *Quo Warranto*, they admitted Persons Freemen who were not Inhabitants,

In a *Quo Warranto*, the Judgment is to seize the Franchise in *Manus Regis*, in an Information,



as here to oust the Defendant of a particular Franchise, and herein the first Process is a *Subpana*, and then a *Distringas*, wherein there must be fifteen Days between the *Teste* and the Return, if it issue into a foreign County. *Dominus Rex v. the Mayor and Aldermen of Hertford. Hill. 10 W. 3. B. R. 1 Salk. 374.*

Information  
for a false re-  
turn of a  
*Mandamus.*

A *Mandamus* was granted to the Company of Surgeons, to choose Officers, they made a Return under their common Seal, and now a Rule was mov'd for and granted to file an Information against some particular Persons of the Company for that Return. And the Chief Justice said, the Court must proceed by way of Information, for being a Matter concerning publick Government, no particular person is so concern'd in Interest, as to maintain an Action, and the Information must be granted against particular Persons, tho' the Return be under their common Seal, for there is no other way to try the Right, and if it be found for the King, there must be a peremptory *Mandamus*. The Case of the Surgeons Company, *Trin. 11 W. 3, B. R. 1 Salkeld 374.*

No Process to  
issue on an In-  
formation till  
a Recogni-  
zance entred  
into.

In the Information *supra* against the Mayor and Aldermen of *Hertford*, a Motion was made to set aside the Process, because no Recognizance was given according to the late Act, and this being to try a Right, the Question was, whether it was within the Words of the said Statute, *viz.* Trespasses, Batteries, and other Misdemeanors, which are frivolous wrangling Matters, of an inferior Nature. But the Court said, that this Usurpation here pretended, was a Misdemeanor, and the Information might be as vexatious in this Case, as in Trespass or Battery; that this last is a remedial Law to prevent Vexation, and must be construed accordingly, therefore the Process was order'd to be set aside, but the Information stood. *Dominus Rex v. the Mayor and Aldermen of Hertford. Pasch. 12 W. 3. B. R. 1 Salk. 376.*

But the Infor-  
mation shall  
stand if their  
be none.

A Conviction of Deer stealing on the 3 & 4 W. & M. cap. 10. was return'd on a *Certiorari*, and Exceptions taken to it; and it was said by Holt C. J. That in these summary Proceedings the Right of an *Englishman* of being try'd *per pares suos* was taken away, therefore the Court was to construe them strictly, so far as to see that the Fact was an Offence within the Act, and that the Justices proceeded accordingly, and these Points were agreed. 1. That the Fact in the Conviction need not be laid *contra pacem*, for mere Form or Formality is not required in these nor any other summary Proceedings. *Et per Northey* Attorney General. This is not the King's Prosecution, he can have no Fine but the Prosecution of the Party, and this is the Memorandum of what the Justice has done in that Matter.

2. That *inter* such a Day and such a Day he kill'd three Deer, is good, for if a Day certain were alledg'd, the Informer is not tyed up to that. Now in these Cases he is confin'd to give Evidence of a killing within these Days, so that it is more certain and better for the Defendant, and *Northey* cited. *Rast.* 410. *Hern.* 549. *Winch.* 54, 547. *Co. Entr.* 158, &c. Otherwise it is in an Information at Common Law, because every distinct Offence creates a new Penalty, but in Trespass a Fact may be laid to be done *diversis diebus & Vicibus* *inter* such a Day and such a Day, because it is not a new Action, but an Increase of Damages. *Per Gould quod Holt C. J. concessit.*

The Informer not tyed up to a certain Day when the Fact was committed.

But 'tis otherwise in an Information at Common Law.

3. That an unlawful killing is sufficient, and it need not set forth a Hunting nor how the Deer was kill'd.

4. That *Ideo Consideratum est quod Convictus est* without & *quod forisfaciet*, is sufficient, for the Statute gives that in Consequence, and the judicial part ends at the Conviction, the rest is only Consequence and Execution.

5. That if the Owner of the Park die before Execution, and the Conviction is affirm'd, here his Executors shall have a *Levari facias* (*sed Videtur*,

as here to oust the Defendant of a particular Franchise, and herein the first Process is a *Subpana*, and then a *Distringas*, wherein there must be fifteen Days between the *Teste* and the Return, if it issue into a foreign County. *Dominus Rex v. the Mayor and Aldermen of Hertford. Hill. 10 W. 3. B. R. 1 Salk. 374.*

Information  
for a false re-  
turn of a  
*Mandamus.*

A *Mandamus* was granted to the Company of Surgeons, to choose Officers, they made a Return under their common Seal, and now a Rule was mov'd for and granted to file an Information against some particular Persons of the Company for that Return. And the Chief Justice said, the Court must proceed by way of Information, for being a Matter concerning publick Government, no particular person is so concern'd in Interest, as to maintain an Action, and the Information must be granted against particular Persons, tho' the Return be under their common Seal, for there is no other way to try the Right, and if it be found for the King, there must be a peremptory *Mandamus*. The Case of the Surgeons Company, *Trin. 11 W. 3, B. R. 1 Salkeld 374.*

No Process to  
issue on an In-  
formation till  
a Recogni-  
zance entred  
into.

In the Information *supra* against the Mayor and Aldermen of *Hertford*, a Motion was made to set aside the Process, because no Recognizance was given according to the late Act, and this being to try a Right, the Question was, whether it was within the Words of the said Statute, *viz.* Trespasses, Batteries, and other Misdemeanors, which are frivolous wrangling Matters, of an inferior Nature. But the Court said, that this Usurpation here pretended, was a Misdemeanor, and the Information might be as vexatious in this Case, as in Trespass or Battery; that this last is a remedial Law to prevent Vexation, and must be construed accordingly, therefore the Process was order'd to be set aside, but the Information stood. *Dominus Rex v. the Mayor and Aldermen of Hertford. Pasch. 12 W. 3. B. R. 1 Salk. 376.*

But the Infor-  
mation shall  
stand if their  
be none.



A Conviction of Deer stealing on the 3 & 4 Information and Conviction for Deer stealing before a Justice of Peace. *W. & M. cap. 10.* was return'd on a *Certiorari*, and Exceptions taken to it; and it was said by *Holt C. J.* That in these summary Proceedings the Right of an *Englishman* of being try'd *per pares suos* was taken away, therefore the Court was to construe them strictly, so far as to see that the Fact was an Offence within the Act, and that the Justices proceeded accordingly, and these Points were agreed. 1. That the Fact in the Conviction need not be laid *contra pacem*, for mere Form or Formality is not required in these nor any other summary Proceedings. *Et per Northey* Attorney General. This is not the King's Prosecution, he can have no Fine but the Prosecution of the Party, and this is the Memorandum of what the Justice has done in that Matter.

2. That *inter* such a Day and such a Day he kill'd three Deer, is good, for if a Day certain were alledg'd, the Informer is not tyed up to that. Now in these Cases he is confin'd to give Evidence of a killing within these Days, so that it is more certain and better for the Defendant, and *Northey* cited. *Rast. 410. Hern. 549. Winch. 54, 547. Co. Entr. 158, &c.* Otherwise it is in an Information at Common Law, because every distinct Offence creates a new Penalty, but in Trespass a Fact may be laid to be done *diversis diebus & Vicibus* *inter* such a Day and such a Day, because it is not a new Action, but an Increase of Damages. *Per Gould quod Holt C. J. concessit.* The Informer not tyed up to a certain Day when the Fact was committed. But 'tis otherwise in an Information at Common Law.

3. That an unlawful killing is sufficient, and it need not set forth a Hunting nor how the Deer was kill'd.

4. That *Ideo Consideratum est quod Convictus est* without & *quod forisfaciet*, is sufficient, for the Statute gives that in Consequence, and the judicial part ends at the Conviction, the rest is only Consequence and Execution.

5. That if the Owner of the Park die before Execution, and the Conviction is affirm'd, here his Executors shall have a *Levari facias* (*sed Videtur*,

*detur*, it must be upon Affidavit, and then the Matter suggested on the Roll) so may the Church Wardens without Suggestion or *Scire facias*, and so may the King. *King v. Chandler. Mich. 1 An. B. R. 1 Salk. 378.*

Sir James Montague moved to quash a Conviction of Deer stealing on 3 & 4 *W. & M.* taken by a Justice who entered into a Glovers House, and finding a Deer Skin, asked him how he came by it, the Glover said he bought it of J. S. who not giving a good Account of himself, was committed. And the Court held, that the Justice might enter and convict the person that sold it. For the Statute might be easily evaded if the Deer Stealer could discharge himself by a Sale. *Domina Regina v. Jennings. Trin. 7 Ann. B. R. 1 Salk. 383.*

If the Information be in due time the Conviction may be at any time after.

A Conviction of Deer stealing being return'd on a *Certiorari*, the Objection was, 1. That the Conviction appear'd to be a Year after the Day of the Information. But it was held sufficient that the Information be prosecuted within a Year after the Fact, for that is a good Commencement of the Suit, and it is from that the Computation is made in all such Cases.

2. Objec. It is said to be *in quodam loco in ambulacro Chasea*, and this Walk may be in a Chase, and not of it *sed non allocatur*, for it must be intended that the Walk was part of the Chase, and the place part of the Walk.

3. Objec. No due Summons *non allocatur* the Defendant having appear'd. In a *Mandamus* it must appear, that the Party was summon'd, because he is to lose his Freehold, and it is a Course of proceeding by Common Law wherein no Appeal lies, otherwise in Convictions which are a proceeding by the Statute in which the Defendant appear'd, and that Appearance will aid the want of Summons; so it was held in *Peachey's Case*, and all the Precedents are so.

4. Objec. *Quod Convictus est & forisfaciet Summam 30l. juxta formam Statuti* without making a Distribution which ought to be 10l. to the Party

ty griev'd and 10*l.* to the Poor, &c. but the Court held, it was well enough. It is enough to say *quod Convict. est & forisfaciet juxta formam Statut.* for by the Statute he is only to forfeit in case he has Goods which is conditional and not absolute. And *Parker C. J.* the Words *juxta*, &c. qualify it *Et per Cur.* The Judgment in such Cases seldom makes a Distribution, and it has been a Question whether *Convict. est* be not enough of it self. *Vid. Rex v. Chandler ante.*

5. Objec. This Conviction is pardon'd by the late Act of General Pardon, being not a final Judgment. *Vid. Dy. 322.* To which it was answer'd by Serjeant *Pengelly*, 1. That this is more than an interlocutory Judgment, and that it is a compleat and a final Judgment, because a Writ of Error lies on it. 2. He argued, that it could not be pardon'd. 1. Because it is a Forfeiture to the Party griev'd, and he hath an Interest in the Penalty, and it is a part of the Judgment. 2. Because the Punishment of the Party in this Case, is by way of Satisfaction, not for example like the three Years Imprisonment by the Statute *de Malefactoribus in parcis.* 2 *Inst.* 200. 3 *Inst.* 171. 5 *Co.* 51. not like 1 *Cro.* 46, 47, 198. 11 *Co.* 65, 66. 3 *Cro.* 338. 1 *Mod.* 34. 3 *Cro.* 82, 83. *Adjournatur Dom. Regina v. Barret. Mich. 9 Ann. B. R.* 1 *Salk.* 383.

An Information was exhibited by the Attorney General against the Defendant, for licensing *Dan-gerfield's* Narrative. The Defendant pleaded to the Jurisdiction of the Court that he did it as Speaker, and by Order of the House of Commons, and demands Judgment of this Court whether they will take Conusance of it. To which the Attorney General demurs, (See the Case put at large by Sir *Robert Atkins*, in his Discourse of the Power, Jurisdiction, and Privilege of Parliament occasion'd by this Information, and publish'd *Anno. 1689.*)

*Poll. xfen* for the Defendant. This Matter touches the Parliament, and therefore not triable here. This being done in pursuance of an Order of

Information and an Order of the House of Commons pleaded to the Jurisdiction of the Court but over-rul'd.



of the House of Commons, is their Act, not his. The Parliament is the highest Court.

C. J. The House of Commons is no Court, nor part of a Court.

*Wythins*, The King himself cannot license a Nuisance; nor (*per C. J.*) any thing that is *malum in se a Minori*; in this Case Judgment (*instant*) *quod Respondeat Ouster*.

*Astry*, Upon a *Respondeat Ouster* they have usually four Days time to plead, as in *Fitzharris* and *Elliot's* Case; but it is in the discretion of the Court; and four Days were given accordingly; and afterwards he pleaded the common Plea, *quod non vult contendere cum Domino Rege*, and was fin'd 10000 l.

Judgment on  
a *Quo Warranto*.

Upon a *quo Warranto*, when the Liberties are seiz'd *quousque*, &c. and they do not replevy them, (*per Astry*) the Course is that Judgment final be given, *nisi* they plead within such a Day. *Rex v. William's. Comberbach* 18, 19.

Information  
for going to  
Churcharm'd.

Information for going to Church with Pistols, &c. *cont. Stat. of 2 Ed. 3. of Northampton.*

*Winnington pro Defendente*, This Statute was made to prevent the Peoples being oppress'd by great Men; but this is a private Matter and not within the Statute. *Vid. Stat. 20 R. 2.*

C. J. This Offence had been much greater and better laid at Common Law, but though this Statute be almost gone in *desuetudinem*, yet where the Crime shall appear to be *Malo Animo* it will not come within the Act; (though now there be a general connivance to Gentlemen to ride arm'd for their Security) but afterwards he was found not guilty. *Rex v. Sir John Knight, Comberbach.* 38.

Security taken  
tho' the De-  
fendant ac-  
quitted.

Moved *per Attorney General*, that the Defendant, though found not guilty, may be bound to the good Behaviour, according to *Jordan's* Case; and it was order'd accordingly *per Cur'*. *Rex v. Sir John Knight.* 40.

Chief Justice  
in Eyre can't  
commit be-

Lord *Lovelace* against certain Trespassers in the Forests: They appear'd by *Habeas Corpus cum Causa*; and the Cause of their Commitment appear'd

appear'd to be upon the Warrant of my Lord<sup>fore Present-</sup>  
*Lowlace*, chief Justice in *Eyre* of the Forest,<sup>ment.</sup>  
 which was sent and executed by a Messenger, up-  
 on their having Wood and Timber of the Forest  
 found in their Yards. *Cumb.* 159.

*Powel* Serjeant, for the Prisoners: By the Char-  
*ter de Foresta*, and 1 *Ed.* 3. c. 8. and 7 *Ri.* 2. c. 4.  
 No Man shall be imprison'd before a Presentment  
 at the Swainmote, and the chief Justice in *Eyre*  
 is within those Statutes, and restrain'd thereby  
 from imprisoning; and he cited *Register de B.* 80.  
*Fitz. N. B.* 67. C. to the same purpose. *Ibid.*

Attorney General *contra*: The Commitment  
 is good: I agree the Statutes and the Books cited  
 are of Writs grounded on the said Statutes; but  
 those Statutes do not extend to restrain the chief  
 Justice in *Eyre*, who is the supream Judicial Offi-  
 cer, but those Statutes intend to restrain the mi-  
 nisterial Officers, as Foresters, Warders, &c. and  
 they 'tis true can't imprison before Presentment  
 by the said Statutes. *Ibid.*

This Commitment is also good, because it ap-  
 pears by the Return that they were taken in this  
 manner, *viz.* Timber, &c. of the Forest was  
 found upon them: The Body shall be taken im-  
 mediately upon assarting; and the cutting down  
 Timber and Wood of a Forest is an assarting.  
 The difference between the Power of the chief  
 Justice and the ministerial Officers of the Forest,  
 is like that which is between a Justice of the  
 Peace and the Constable; the Constable, if the  
 Peace be broke in his presence, may seize and car-  
 ry before a Justice of Peace, but can't commit;  
 but a Justice of Peace may commit in such Case;  
 and that notwithstanding there wants such a par-  
 ticular Power in his Commission. 1 *Roll.* 534.  
 Chief Justice in *Eyre* may commit out of Court;  
 and the universal Practice, which is the best In-  
 terpreter of an ancient Statute, agrees with it.  
*Ibid.*

*Holt*, C. J. The Statutes cited, 'tis true, do  
 not exclude the chief Justice in *Eyre* from com-  
 mitting 'till Presentment by express Words; but

yet he is within the general Words of them. *Nota*, The Words of 1 *Ed.* 3. 8. Churchwarden and other Minister; the Words of 7 *R.* 2. are, None shall be taken by any Officer of the Forest. *Ibid.*

*Eyres J.* An excuse or justification of an Imprisonment ought to be shewn by the Party committing, if the Forest Law justifies the Commitment. 3 *Leon.* 218. *Russel's Case.*

And I conceive clearly that the chief Justice can't commit but only where the Party is taken in the manner *scilicet*, with bloody Hands; or with Venison in the Forest; or in the Act of cutting down Trees, &c. but if Timber be found in my Yard, which was cut in the Forest, that is not in the manner, to which *Dolben* Justice, and the rest agreed. *Ibid.*

*Pemberton, Serj.* Said although one be taken in the manner, yet the chief Justice in *Eyre* can't commit, for he can ground his Warrant on nothing but a Presentment: But *Holt* thought he might on Oath made that he was taken in the manner: It was likewise agreed by all that it was irregular, in as much as that he sent a Messenger with the Warrant. I conceive by reason of the Statute *R.* 2. none shall be taken by any Officer, &c. (but the Judges did not declare wherefore). And *per totam Cur.* The Warrant is illegal. Attorney General objected that it was not, and that they ought to sue out their Writ of Mainprize; yet afterwards the Court discharg'd the Prisoners. *The Case of my Lord Lovelace, chief Justice in Eyre, and several that had made destruction in the Forest of Dean.* Comberbach 159, 160.

### Interest.

37 *H.* 8. c. 9. **B**Y this Statute the Interest of Money was reduc'd to 10 per Cent. by the 21 *Jac.* c. 1. it was reduc'd to 8 per Cent. by 12 *Car.* 2. c. 13. to 6 per Cent.

6 per Cent.

No Person shall take directly or indirectly, for Loan of any Monies, Wares, Merchandizes, or other Thing, above

the



he value of 5 *l.* for the forbearance of 100 *l.* for a Year. 12 *Ann. c. 16.*  
and so proportionably for a greater or lesser Sum; and all Reduc'd to 5  
Bonds, Contracts, and Assurances made for payment of *per Cent.*  
any principal Sum to be lent upon Usury, whereby there  
shall be reserv'd or taken above the Rate of 5 *l.* in the  
Hundred, shall be void: And whoever shall take, accept, Securities for  
and receive, by way or means of any corrupt Bargain, more void.  
Loan, Exchange, or Shift, for the Interest of any Wares,  
Merchandize, or other Thing whatsoever, above the Rate  
of 5 *l.* for the forbearing of 100 *l.* for a Year, shall forfeit  
treble the value of the Monies, Wares, and other And Forfeiture of treble  
Things so lent, bargain'd, exchang'd, &c. *Stat. 12 Ann. c. 16.* Value.

And every Scrivener, Broker, Solicitor, and Driver of No more than  
Bargains, who shall take, directly or indirectly, any Sum 5 *s.* to be  
of Money or other Reward, or other Thing, for Brokage, taken for pro-  
Soliciting, or procuring the Loan, or forbearing of any curing 100 *l.*  
Sum, above the Rate of 5 *s.* for the forbearing of 100 *l.*  
for a Year, or above 12 *d.* besides the Stamps, for making 12 Pence for  
or renewing of the Bond or Bill for Loan, or forbearing making a  
thereof, or for any Counter Bond or Bill concerning the Bond.  
same, shall forfeit 20 *l.* with Costs, and suffer half a Penalty on the  
Years Imprisonment; one Moiety of the said Forfeitures Offenders.  
to go to the Crown, and the other to him that will sue  
for them in the County where the Offence is committed,  
and not elsewhere, by Action of Debt, Bill, Plaint, or  
Information, in which no Essoign, &c. shall be allow'd.  
*Ibid.*

READINGS.

The letting Money out at Interest, or upon Letting Mo-  
Usury was against the Common Law; and if ney at Inte-  
any one after his death had been found to be a rest against  
Userer, all his Chattels were forfeited to the the Common  
King, and his Lands escheated to the Lords of Law ancient-  
the Fee. And according to several ancient Sta- ly.  
tutes all Usury is unlawful; but at this Day, nei-  
ther the Common or Statute Law absolutely pro-  
hibit Usury. 3 *Inst. 151, 152.*

A Covenant or Promise to pay Interest in con-  
sideration of the forbearance of a Debt, will  
now maintain an Action. 1 *Hawk. 245.*

If I lend 100 *l.* to have 120 *l.* at the Years end Lending Mo-  
upon a Casualty, if the Casualty goes to the In- ney at higher

Interest where  
the principal  
is hazarded  
lawful.

So where the  
Borrower has  
an equivalent,  
as to pay no-  
thing if he  
repays the  
Principal the  
first Year.

A corrupt  
Agreement  
with a third  
Person, shall  
not avoid a  
just Debt.

A subsequent  
corrupt  
Agreement  
cannot avoid  
a Contract  
fairly made.

terest only, and not to the Principal, it is Usury; for the Party is sure to have the Principal again come what will come; but if the Interest and Principal are both in hazard, it is not then Usury: And it was therefore adjudg'd in the Common Bench in *Dartmouth's Case*, where one went to *Newfoundland*, and another lent unto him 100*l.* for a Year to victual his Ship, and if he return'd with the Ship, he would have so many thousand of Fish, and expresses at what Rate, which exceeded the Interest which the Statute allows; and if he did not return, that then he would lose his Principal: It was adjudg'd to be no Usury. Secondly, If I secure both Interest and Principal, if it be at the Will of the Party who is to pay it, it is no Usury; as if I lend to one 100*l.* for two Years, to pay for the Loan thereof 30*l.* and if he pay the Principal at the Years end, he shall pay nothing for Interest, this is not Usury; for the Party hath his election, and may pay it at the first Years end, and so discharge himself. *Cro. Jac.* 508, 509.

A Bond made *bona fide* to secure a just Debt, payable with lawful Interest, shall not be avoided by reason of a corrupt Agreement between others to which the Obligee was no way privy: As where *A.* being indebted to *B.* in 100*l.* agrees to give him 30*l.* for the forbearance of that 100*l.* for a Year, and gives him a Bond of 60*l.* for payment of the 30*l.* and for payment of the 100*l.* enters into a Bond of 200*l.* together with *B.* for the payment of a true Debt of 100*l.* due from *B.* to *C.* *Moore* 752. *Cro. Jac.* 32, 33. 1 *Hawk.* 246.

The receipt of higher Interest than is allow'd by the Statute by vertue of an Agreement subsequent to the first Contract, does not avoid an Assurance fairly made, and agreeable to the Statute, but only subjects the Party to the Forfeiture of the treble Value; for the Words are, that all Assurances for the payment, &c. whereupon or whereby there shall be reserv'd or taken above the Rate of 5*l.* in the Hundred, &c. shall be

be utterly void. 1 *Mod.* 69. 2 *Mod.* 307. 1 *Saund.* 294. *Ibid.*

The grant of an Annuity for Lives, not only exceeding the Rate allow'd for Interest, but also exceeding the known proportion for Contracts of this kind, in consideration of a certain Sum of Money is not within the meaning of the Statute, unless there were some underhand Bargain for the security of the Re-payment of the Principal or Consideration Money. *Cro. Jac.* 253. 2 *Lev.* 7, 8. 1 *Hawk.* 247.

An Annuity for Life not within the Statute.

It is not material whether the payment both of the Principal and also of the usurious Interest be secur'd by the same or by different Conveyances; but all Writings whatsoever for the strengthening such a Contract are void. *Cro. Eliz.* 25, 588. 1 *Syd.* 182. b. *Cro. Jac.* 252, 508.

The Statute not to be evaded by contriving different Conveyances.

A Contract reserving to the Lender a greater advantage than is allow'd by the Statute, is equally within the meaning of it, whether the whole be reserv'd by way of Interest, or in part only under that Name, and in part by way of Rent for a House, let at a Rate plainly exceeding the known Value. 2 *Lev.* 7, 8. *Cro. Jac.* 440. 1 *Hawk.* 248.

Nor by making part of the Interest payable under another Name.

He who hath agreed to pay Money upon a usurious Contract, shall not be admitted to give Evidence upon an Information against the Usurer, unless he have paid off the whole Debt; for by such means a Man might avoid his own Act and Deed. *Co. Lit.* 6. b. 2 *Roll. Abr.* 685.

One agreeing to pay unlawful Interest, no Witness till the Debt is paid.

The mistake of a Scrivener shall not avoid a fair Agreement, if he draws a Bond, &c. in such a manner as brings it within the Statute; neither shall the receipt of the Interest before the Time for the conveniency of the Creditor, &c. without any corrupt Agreement, make the Receiver liable to the Forfeiture of the treble Value; or if the Lender accepts of a voluntary Gratuity from the Borrower upon payment of Principal and Interest, if there was no Agreement made for it, though the Lender might expect it.

Mistake of a Scrivener shall not avoid a fair Agreement.

Nor a voluntary Gratuity.



Justices of Peace have no Jurisdiction of the Offence.

Indictment was at the Sessions before the Justices of the Peace at *Hicks's-hall*, for Usury *contra formam Statuti*, and Judgment was against the Defendant, upon which a Writ of Error was brought in *B. R.* and the Judgment revers'd; for the Justices of the Peace have no Jurisdiction in this Case. *Domina Regina v. Smith, Pasch. 4 Ann. 2 Salk. 680.*

### Judgments.

4 H. 4. c. 23. Judgment to stand till revers'd for Error.

After Judgment given in the King's Courts, the Parties and their Heirs shall be in peace until the Judgment be undone by Attaint or Error. *Stat. 4 H. 4. c. 23.* All Sheriffs, &c. are impower'd hereafter to deliver Execution of all Lands, Tenements, Rectories, Tythes, Rents, and Hereditaments whereof any one shall be seiz'd in trust for the Defendant against whom Execution shall be sued. *Stat. 29 Car. 2. c. 3.*

Judgments.

The Day of signing Judgment to be entred on the Roll.

And to affect Purchasers only from the Date.

Property of Goods not bound till the

Execution is deliver'd to the Sheriff.

4 & 5 W. & M. c. 20. Judgments by confession to be doggeted the Term after they are enter'd.

Every Judge or Officer of the Courts of *Westminster*, who shall sign Judgments, shall set down the Day of the Month and the Year he signs them, upon the Paper Record, &c. which he shall so sign, which shall be enter'd upon the Margin of the Roll of the Record of the said Judgment, and they shall be accounted Judgments only from the time of such signing against Purchasers, *bona fide*, and for valuable Consideration. *Ibid.*

The Property of Goods shall not be bound by any Writ of Execution, until it be deliver'd to the Sheriff Under-sheriff, &c. who shall indorse the same *gratis*, with the Day of the Month and Year when he receiv'd it. *Ibid.*

The Clerk of the Efoigns of the Court of Common Pleas, every Clerk of the Doggets of the King's-bench, and the Master of the Office of Pleas in the Exchequer, 4 & 5 W. & M. shall in every *Easter* Term yearly, cause to be made and put into an alphabetical Dogget by the Defendants Names, a particular of all Judgments for Debt by Confession, *non sum Infarmatus*, or *Nihil dicit*, enter'd in the said respective Courts of the Term of *St. Hillary* preceding, containing the Names of the Plaintiffs and the Names of the Defendants, with their Places of Abode, Title, and Profession (if any such be in the Record of the Judgment) and the

the Debt, Damages, and Costs recover'd thereby; and in what County, City, or Town the respective Actions were laid, and the number Roll of the Entry thereof. Stat. 4 & 5 W. & M. c. 20.

And the Clerks of the Judgments, and the other Clerks to of the said respective Courts, shall bring to the Clerks of bring Notes the Doggets of the Kings-bench and Common Pleas re- in Writing of spectively, and to the Master of the Office of Pleas in all Judgments the Exchequer, within ten Days before the time afore-enter'd to the said, Notes in Writing of all the Judgments by them en- Clerk of the ter'd of the said Term of St. Hillary, upon Verdicts, Doggets. Writs of Enquiry, Demurrer, and every other Judgment for Debt and Damages in all Things, as aforesaid, to the end the same may be enter'd in the said respective Doggets in manner aforesaid. *Ibid.*

And in every Michaelmas Term the like Dogget shall be Judgments made of all Judgments of Easter and Trinity Term pre- not doggeted ceeding: And every Hillary Term the like Dogget of all shall not affect Judgments, in the preceeding Michaelmas Term, shall be Lands. made in the like manner: And the said Dogget shall be kept in Books in Parchment in the Office of the respective Officers before nam'd, to be view'd by all Persons, paying for every Terms search for Judgments against any one Person 4 d. and no more. *Ibid.*

Any of the aforesaid Officers neglecting their Duty in the Premises to forfeit 100 l. for every Offence, one Moiety to the Party griev'd, and the other to him that shall sue for the same. *Ibid.*

And no Judgment not doggeted and enter'd, as aforesaid, shall affect any Lands or Tenements as to Purchasers or Mortgagees, or have any preference against Heirs, Executors, or Administrators in their Administration. *Ibid.*

And to recompence the Clerks of the Judgments, the Charges they shall be at in the Premises there, shall be paid by the Plaintiffs in every of the said Judgments, upon Verdicts, Writs of Enquiry, Demurrer, and every other Judgment 4 d. besides the Fees now due. *Ibid.*

To be in force for one Year, and to the end of the next Session of Parliament. *Ibid.* Made perpetual by 7 & 8 W. 3. c. 36.

All the Statutes of Jeoffails shall extend to Judgments 4 & 5 A. c. 16. upon *nihil Dicit*, Confession, or *non sum Informum*, in any Statutes of Court of Record, so as there be an original Writ or Bill, Jeoffails ex- and Warrants of Attorney duely fil'd. Stat. 4 & 5 Ann. tended to c. 16. Judgments by

Where a Verdict shall be given in any Action, in Confession. any Court of Record in England or Wales, the Judg- 5 Geo. c. 13. ment No Judgment

to be staid for defect in Form. ment shall not be staid for any defect in Form or Substance in any part of the Proceedings. Stat. 5 Geo. c. 13.

## READINGS.

Judgment de-  
fin'd.

Judgment, *Judicium; quasi Jurisdictum* is the Sentence of the Court upon the Matter in Controversy. The ancient Words of Judgment are, *Consideratum est, &c.* because Judgment is ever given by the Court upon due consideration had of the Record before them; and so long as it stands in force, is taken to be true, and cannot be contradicted. 1 *Inst.* 39, 168. 3 *Inst.* 210.

Judgment  
shall not be  
staid by an  
Injunction  
out of Chan-  
cery.

In an Action of Debt at the Common Law, Judgment being against the Defendant, and Day given to move in Arrest thereof, he in the Interim preferr'd his Bill in Chancery, and obtain'd an Injunction to stay Judgment and Execution; but notwithstanding the Court granted both; for by the Statutes of 27 *Ed.* 3. c. 1. and 4 *Hen.* 4. c. 23. after Judgment given, (be it in Plea real or personal) the Party ought to be quiet and submit thereto; for a Judgment being once given in *Curia Domini Regis*, ought not to be reversed nor avoided but by Error or Attaint. And in the same Term upon a Prohibition to stay Proceedings in the Court of Requests, it was deliver'd for a general Maxim in Law, that if any Court of Equity doth intermeddle with any Matters properly tryable at the Common Law, or which concern Freehold, they are to be prohibited; for neither Writ of Error or Attaint can be brought to reverse the Decrees made in those Courts; otherwise it is upon Tryals at the Common Law; for all Matters are there decided, either by a Jury of twelve Men, against whom (if they err in their Verdict) an Attaint lieth; or by the Judges, where if they err in their Judgment, the Party griev'd may bring his Writ of Error. *Heath v. Ridley.* Cro. Jac. 335, 336.

Where



Where there are several distinct Judgments against the Defendant, one of those Judgments may be revers'd as erroneous, and yet the other Judgments stand in force, 21 *Car. B. R.* Where Damages are several, though the Costs are entire. *Hob. 5.*

All Judgments given in any Court of Record ought to be enter'd in *Latin*, and if they be in *English* they are reverfable by a Writ of Error. 21 *Car. B. R.* *Style's Pract. Reg. 351.* Judgments must be enter'd in *Latin*.

No Counsel ought by the Rules of the Court, to move any thing in Arrest of Judgment, except the Roll wherein the Judgment is enter'd, or the *Postea* be in Court, 22 *Car. B. R.* That the Court may be satisfied that the Matter moved in Arrest of Judgment, is truly recited from the Record; for the Court will not rely upon the Allegation of Counsel at the Bar. *Ibid.*

A Judgment which is given contrary to the Verdict which was found in the Cause, is a void Judgment, *Mich. 22 Car. B. R.* For the Judgment is to be warranted by the Verdict, and is but the Affirmance of the Verdict; and therefore it must not contradict the Verdict, but concur with it in all Things. *Ibid. 352.* Judgment cannot contradict the Verdict.

If a Verdict be given after the Term, no Judgment can be given upon their Verdict until the next Term following, *Mich. 22 Car. B. R. 23 Car. B. R.* for such Proceedings in the Law ought not to be in the Vacation time, but in Term time; for the Judgment is the Act of the Court, and the Court sits not but in Term. *Ibid. 353.* Judgment to be enter'd the Term after the Verdict.

If Judgment be obtain'd, but the Plaintiff doth take out no Execution upon this Judgment in a Year and a Day next after the Judgment given, the Plaintiff cannot then take out Execution, until he have reviv'd this Judgment by a *Scire Facias*, which *Scire Facias* is to give notice to the Defendant, to shew Cause why the Plaintiff should not take out Execution upon the Judgment, which Writ he may have, without Motion, by the course of the Court; but if there be a Judgment above ten Years old, upon which no Execution hath Judgment after a Year, to be reviv'd by *Scire Facias*. If ten Years old, there must be a Motion to revive it.

hath been taken out, such a Judgment cannot be reviv'd by a *Scire Facias*, without a Motion and leave of the Court, that the Court thereby be put in mind of what was formerly done, *Mich. 22 Car. B. R.* But the Court doth not use to deny a *Scire Facias* in such a Case. *Ibid.*

Judgment enter'd 4 Days after the *Postea* brought in.

Four Days after the Plaintiff's Attorney doth bring the *Postea* into the Court, if the Rule for Judgment is out, he may enter Judgment for his Client by the course of the Court, *Mich. 22 Car. B. R.* Except the Defendant do then, or before, move something to the Court in arrest or stay of Judgment; but no Judgment upon a Verdict ought to be enter'd until a Rule given, and such Rule out.

But a Rule must be given. Repleader.

Where a Judgment is arrested only for mispleading, there the Court will grant a Repleader, *Mich. 22 Car. B. R.* to the end a good Judgment may be given, which cannot be upon an ill pleading.

Judgment unduly obtain'd vacated.

If a Judgment be unduly obtain'd, and sufficient Proof thereof be made unto the Court, the Court will vacate the Judgment, and restore the Party damnified by it to be in the same condition he was in before Judgment, *Mich. 22 Car. B. R.* without putting him to a Writ of Error, *Pas. 22 Car. B. R.* for the Court will not be made a Stale to do any Person injury; and the Court will also punish the Party that used the Falsity to obtain it.

No Judgment till enter'd.

Though a Judgment be legally sign'd, yet if it be never enter'd it is no Judgment, *Hill. 22 Car. B. R.* for every Judgment must be Matter of Record; but before the Entry it is not so, the signing of the Judgment is but the Warrant of the Master of the Office, for the Attorney to enter the Judgment for his Client.

How long the Defendant shall have to move in arrest of Judgment.

The Defendant hath all the Term wherein a Verdict was given against him to speak any thing to arrest it, if the Plaintiff hath not given his four Days Rule, and sign his Judgment, which if he hath, then it is too late to move, and the Defendant is put to his Writ of Error; for the Judgment is all the Term wherein it was given in the Breast of the Judges, although it be enter'd

ter'd upon Record, the Term being but one Day in Law. *Pasch. 23 Car. 2. and 24 Car. B. R.*

If a Verdict pals for the Plaintiff, and the Plaintiff will not enter his Judgment upon this Verdict, the Defendant may by Motion of Court compel the Plaintiff to enter it, &c. so it is of a Writ of Enquiry of Damages, *Trin. 22 Car. B. R.* for the Plaintiff ought to be content with what the Law gives him; and if the Defendant might not compel the Plaintiff to enter it, he should be hinder'd from pleading it in bar to another Action brought against him for the same Cause, as the Law allows him to do.

If a Judgment be but seven Years old, the Party may by the course of the Court have a *Scire Facias* to revive it, without moving of the Court for it; and if the Judgment be under ten Years old, the Party may move for a *Scire Facias* to revive it at the side Bar; but if it be ten Years old, or more, a *Scire Facias* to revive it must be mov'd for in Court, *Pasch. 24 Car. B. R.*

Where one entire Judgment is given against two several Persons, and one of them is an Infant, the whole Judgment is void, unless the Infant be a joint Executor with the other Party, *Trin. 24 Car. B. R.* for it being void to the Infant, and being an entire Judgment, which cannot be divided, it must necessarily be void as to the other, and so void in *toto*.

If a peremptory Rule be given for the Defendant to plead at a certain Day in a Civil Cause, if he do not plead accordingly, the Plaintiff may enter Judgment against him without moving of the Court; but if it be an Indictment, Information, &c. in the Crown Office, there Judgment cannot be enter'd without a Motion in Court for a peremptory Rule. *Trin. 24 Car. B. R.*

Where a Judgment is entire, it cannot be reversed in part, and stand good as to another part; but if it be not an entire Judgment, it may, *Trin. 24 Car. B. R.* for an entire Judgment cannot be divided to make one part of it good, and another part of it to be erroneous.

But



Judgment for  
part.

But in an Action where Damages are to be recover'd, if the Declaration be good in part, and insufficient in part, and the Defendant demurs upon the entire Declaration, the Plaintiff shall have his Judgment for that which is well laid, and shall be barr'd for the Residue. *2 Saund. 379, 380. Vid. 1 Saund. 285, 286.*

Judgment against Executors.

If a Man bring an Action of Debt against two Executors, and they plead they have not Assets, and thereupon Issue is join'd, and it is found that one of the Executors had Assets at the time of the Action brought, but that the other Executor had not Assets, the Plaintiff shall have Judgment to recover the Debt against that Executor who was found to have Assets, and a *Nil capiat per billam* shall be entred against the Plaintiff as to the other Executor who was found to have no Assets. *Mich. 23 Car. B. R.* For the Possession that one Executor hath of the Testator's Goods, is not the Possession of the other Executor, and so one may have Assets and the other not. *Vid. 1 Saund. 216, 217.*

Where a Covenant is broken by the Executor, yet the Judgment against him must be *de bonis testatoris si tantum*, &c. *1 Saund. 112.* but not if they are not named Executors. *Ib.*

Judgment given with stay of execution.

If the Defendant gives a Judgment with stay of Execution till a certain Day, the Plaintiff may notwithstanding such stay of Execution, sue forth a *Capias* or *Fi. fa.* into the County where the Action is laid returnable before that Day, to enable him at that Day to take out a *Testatum* against the Defendant, but he shall not in that Case sue out a *Capias* to warrant a *Scire Facias* against the Bail, unless by special Agreement, because it is to the Prejudice of a third person, and the *Capias ad satisfaciendum* in that Case ought to be deliver'd to the Sheriff four Days before the Return be past, and after the Return thereof, to be fil'd. *Per Magistrum Livesay & alios, &c. Pasch. 21 Car. 2. Regis.*

Judgment confes'd as of

It is dangerous to take a Judgment acknowledged in the Vacation, as of a preceding Term, but

if any such Judgment be taken, the Warrant of a preceding Attorney to confess the same must bear Date before, or in the Term whereof it is confessed. But the safest way is to make it a Judgment of the subsequent Term. *M. 1649. B. R.* Yet it is a common practice to do it.

By the Statute of Frauds and Perjuries, no Lands are bound but from the very Day, whereupon the Judgment is sign'd by the Judge or Master of the Office, which they take care to do upon the signing of every Judgment for Debt or Damages. And if an *Elegit* be sued out upon this Judgment, your *Elegit* must be as it was before this Statute, *viz.* That the Sheriff deliver a Moiety of all the Lands that the Defendant had *die Mercur.* for the purpose *prox post quinden. Pascha quo die Judicium præd. reddit. fuit*, as the Record of the Judgment is, for there can be no Judgment but in Term time; and as to the Entry of the Judgment, the Statute makes no Alteration, but when an Ejectment is brought upon this *Elegit* executed and return'd, and entred or fil'd, for the Recovery of Possession of the Lands extended upon this *Elegit*, then at the Trial you must give in Evidence, a Copy of the Judgment whereupon the *Elegit* issued out, with the Day and Year when sign'd, and from thence, and not the Day mentioned in the Writ to be the Day when the Judgment was obtain'd, doth the Plaintiff's Title begin.

If a Warrant of Attorney to confess Judgment, Warrant be made, without mention of any Term when without mention the Judgment should be, it shall be intended the term of the next Term after the Date of it. *Hill. 16 Car. 2. Term. in B. R.*

If one take a Judgment which is entred, he cannot consent to vacate it, because it is a Record. *Mich. 1649. B. R.* But he may acknowledge Satisfaction upon Record, and so make the Judgment fruitless.

If the Defendant in an *Ejectione firma* will not Judgment in plead according to the Rules of the Court, there Ejectment. must be Affidavit made of a sufficient serving of the

the Declaration, and then Counsel must move upon that Ejectment to have Judgment against their own casual Ejector, which the Court will grant, if the Affidavit is sufficient, and make a Rule that unless the Tenant in Possession will appear and become Defendant within such time as the Court will think fit, that Judgment be entred against the casual Ejector.

Judgment for what is not in the Declaration, void.

If any thing be entred in a Judgment which is not mentioned in the Plaintiff's Declaration, upon which the Judgment is given, the Judgment is not good. *Pasch. 1650. B. R.* Because it is in part given for that which the Plaintiff sued not for, and so the Court had no Consuance of it.

Writ of enquiry.

A Judgment upon a *Nihil dicit* in Case, or Trespass, or Covenant, &c. is not a perfect Judgment until the Writ of Enquiry of Damages taken out upon this Judgment be executed; but in Debt it is a perfect Judgment as soon as sign'd, and there needs no Writ of Enquiry. *16 Nov. 1650. B. R.* For the Damages are to be express'd in the Judgment, which cannot be known what they are until the Jury empanell'd by the Sheriff to enquire of the Damages, have found them, because the Damages were never enquir'd of by the Jury that should have try'd the Cause if it had come to a Trial upon a Plea, and an Issue joined, but the Debt is certain, and appears in the Declaration.

Judgment for want of Counsellors Hand to a special plea.

A special Plea deliver'd to the Plaintiff's Attorney or put into the Office without a Counsellors Hand to it, is no Plea, and the Plaintiff may if his Rules are out and no other Plea pleaded, sign his Judgment.

Judgment sign'd the 5th Day after a Writ of enquiry.

Upon a Writ of Enquiry, either on Demurrer or Judgment by default, executed the last Day of Term, the Plaintiff may enter Judgment the 5th Day after, and not before. So where there is a Verdict there must be four Days between the Verdict and the Judgment, not that in all Cases there can be a Motion in Arrest, as in the principal Case, where the Verdict or Inquest is the last Day of the Term: But still there may be a

Writ



Writ of Error, and this time is allow'd for these Purposes, and therefore after Verdict or Writ of Enquiry, the Course is for the Plaintiff to give a Rule to enable him to enter his Judgment *Nisi Causa ostensa sit in Contrarium infra quatuor dies*, and in the principal Case Execution was set aside, because it was sued out the 4th Day after the Term, the Writ of Enquiry being executed and return'd the last Day. *Clark v. Rowland. Trin. 5 W. & M. B. R. 1 Salk. 399.*

A Verdict was given in *Easter Term*, and before Judgment Judgment sign'd, the Plaintiff died. *Et per Holt* sign'd after C. J. That shall not hinder the Judgment being the Death of enter'd, provided it be within two Terms after. the Defendant. And the Statute of Frauds and Perjuries only requires the time of signing should be enter'd on the Roll, and that is only for the Benefit of Purchasers; for if Judgment be sign'd in the Vacation, yet 'tis enter'd as of the Term before, and none but a Purchaser shall be admitted to say it was sign'd as of any other Term, and 'tis the Course of the Court to let all things be done in the Vacation as of the Term before. *Duke of Norfolk's Case. Trin. 1 An. B. R. 1 Salk 401.*

Upon payment of Costs, the Court will set a- Judgment set aside a Judgment tho' it be regularly entred, if the aside on pay- Plaintiff hath not lost a Trial, and so is the com- ment of Costs mon Course in *C. B. Systed v. Lee. Mich. 3 An. B. R. 1 Salk. 402.*

---

## Juries.

Those who have Charters of Exemption from serving 52 H. 3. c. 14 on Juries, Assizes, and Inquests, if their Oaths be Persons who so requisite that Justice cannot be administred without have Charters them, as in Great Assizes, Perambulations, and in Deeds of Exemption where they are named for Witnesses, or in Attaints, and to serve on Juries such like Cases, they shall be sworn. *Stat. 52 H. 3. c. 14.* ries. in some

No more shall be summon'd in one Assize, than twenty Cases not-four, and Men seventy Years of Age continually sick or withstanding. diseas'd at the time of the Summons, or not dwelling in 13 Ed. 1. c. 38. the County, shall not be put in Juries or petty Assizes But 24 Jurors Norto be sum-

- mon'd, sick and aged exempted. Nor shall any be put in Assizes or Juries that hath not 20 s. a Year in Lands; and if such Assizes and Juries be taken out of the Shire, none shall pass in them that have not 40 s. a Year at least, except those who are Witnesses to Deeds. And if the Sheriff or his Bailiffs offend in the Premises, they shall pay Damages to the party griev'd, and be amerced to the King. And the Justices of Assize the County, have power to hear and determine the Offences aforesaid. 40 s. per Ann. Stat. 13 Ed. 1. cap. 38.
- Sheriff summoning others upon Juries to serve out of their proper Counties or Bailiwicks, unless they have 5 l. a Year in Lands at least; and none shall be impanelled to serve in their proper Counties unless they have 40 s. saving that before Justices Errant in their Circuit, and also in Cities, Boroughs, and other Market Towns, where Recognizances, Assizes, and Juries or Inquests, do pass upon Matters touching the said Cities, &c. it shall be done as hath been accustomed. 21 Ed. 1. Stat. 21 Ed. 1.
- None to serve out of the County who have not 5 l. per Ann. No Sheriff or Bailiff shall impanel on Juries, over many Persons, nor others than are ordained by Statute; and they shall impanel such as be next Neighbours, most sufficient, and least suspicious, on pain of double Damages, and of being amerced to the King. 28 Ed. 1. c. 9. Stat. 28 Ed. 1. c. 9.
- More than are necessary shall not be impanelled, and those that are shall be of credit and the next Neighbours. If any Juror take a Bribe, either of the one side or the other, he shall be disabled to be in any Assizes, Juries, or Inquests, and be imprison'd and ransom'd at the King's Will. And the Justices before whom such Assizes, &c. shall pass, are impower'd to hear and determine the said Offence. Stat. 5 Ed. 3. c. 10.
- Juror taking a Bribe, to be disabled, imprison'd, and fin'd. No Indictor shall be put in Inquests to try the Indictments of Felony or Trespass, if he be challeng'd for that Cause. Stat. 25 Ed. 3. c. 3.
- Juror taking a Bribe, to be disabled, imprison'd, and fin'd. In all Inquests to be taken between Aliens and Denizens, one half of the Inquest shall be Denizens, and the other half Aliens, if so many Aliens be in the place that are not Parties to the Suit; and if there be not so many Aliens, then so many as shall be found shall be join'd with Denizens upon the Jury. Stat. 28 Ed. 3. c. 13.
- No Indictor to be of the Jury. Panels shall be made of the next People which are not suspected or procur'd; and Sheriffs, &c. who shall do contrary, shall be punish'd by the Justices who take the Inquest, according to the Trespass, as well against the King as against the Party. Stat. 34 Ed. 3. c. 4.
- A. Neighbours and Men of credit to be impanelled.

If either of the Parties to the Suit will prosecute a Ju- 34 Ed. 3. c. 8.  
 ror that has taken a Bribe on either side to give his Ver- Jurors brib'd  
 dict, he shall have his Plaint by Bill presently before the to be try'd  
 same Justices, and the Juror shall answer without delay; immediately.  
 and if any other shall prosecute such Juror, the Offence  
 shall be heard and determined as aforesaid, and such Pro-  
 secutor shall have half the Fine. and the Parties to the  
 plaint shall recover their Damages by Assessment of the In- Offender to  
 quest, and the Offender shall be imprison'd for a Year, yield Damages  
 and be incapable of a pardon. And if the party will and be impris-  
 prosecute before other Justices, he shall have the Suit as son'd for a  
 aforesaid. Stat. 34 Ed. 3. c. 8. Year.

No Inquest but Assizes and Deliverances of Goals, shall 42 Ed. 3. c. 11.  
 be taken by Writ of *Nisi prius* or in other manner, before Copies of Pa-  
 the Names of the Jurors be return'd into Court. And nels to be de-  
 the Sheriff shall array the Panels in Assizes four Days at liver'd to the  
 least, before the Sessions of the Justices, on pain of 20 l. Parties before  
 And the Bailiffs of Franchises shall make their Returns the Trial, on  
 to the Sheriffs six Days before their Sessions, upon the pain of 20 l.  
 like pain. And in all Panels shall be put the most sub- Panels to be  
 stantial, creditable, and unsuspected People, who have compos'd of  
 best Knowledge of the Truth, and are nearest. Stat. 42 Neighbours  
 Ed. 3. c. 11. and Men of

No person shall pass in any Inquest upon trial of the credit.  
 Death of a Man, or between party and party in plea, real 2 H. 5. c. 3.  
 or personal, where the Debt or Damage declar'd amounts Jurors shall  
 to forty Marks, if he have not 40 s. a Year above Repr- have 40 s. per  
 zes, if he be challeng'd. Stat. 2 H. 5. c. 3. Ann.

The Sheriffs of London are impower'd to impanel Persons 4 H. 8. c. 3.  
 being Citizens who have Goods to the Value of an Hun- Jurors in Ci-  
 dred Marks, who shall be sworn and act as other Persons ties to be  
 who have Lands to the Value of 40 s. per Ann. Stat. 4 H. 8. worth 100  
 cap. 3. Marks.

Every person being a Freeman of any City or Town 23 H. 8. c. 13.  
 Corporate, and worth in moveable Goods and Substance, Jurors in Ci-  
 to the Value of 40 l. shall be admitted in trial of Mur- ties to be  
 ders and Felonies in every Sessions and Goal Delivery to worth 40 l. in  
 be holden for such Cities and Towns Corporate, albeit criminal cases,  
 they have no Freehold, provided that this Act do not ex- Not to extend  
 tend to any Knight or Esquire abiding in or resorting to to any Knight  
 any such City, &c. Stat. 23 H. 8. cap. 13. or Esquire.

Where such Persons as should pass upon the Trial of 35 H. 8. c. 6.  
 any Issue join'd in any of the Courts at Westminster, ought Form of the  
 to have 40 s. per Ann. there the Writs of *Venire facias* shall Writ of *Veni*;  
 be in this Form: *Rex, &c. Precipimus, &c. quod Venire fac.*

*fac. coram, &c. 12 liberos & legales homines de Viceneto de B.*  
*quorum quilibet habeat quadraginta Solido terre tenement. vel*  
*reddit per Annum ad minus per quos Rei veritas melius sciri po-*



Penalty of returning a Juror who hath not 40 s. per An.

6 sufficient Hundredors to be return'd. None to be return'd who have not Freehold.

The Value of Issues to be return'd.

For want of Jurors a Tales of those that are present shall be granted at the request of either party.

Juror's Appearance dispenc'd with.

Penalty of returning a Juror not duly summon'd.

And where it is not requisite that the Jurors should have 40 s. a Year, then this Clause, *Quorum quilibet habeat quadraginta Solid. terre ten. vel reddit per Annum ad minus* shall be omitted. And upon every Writ that shall have the said Clause *Quorum quilibet*, &c. the Sheriff shall not return any person who has not 40 s. a Year out of ancient Demesn within the County, and shall also return six sufficient Hundredors, if there be so many in the Hundred where the Venue lieth, on pain of 20 s. And in every Writ where the said Clause *Quorum quilibet*, &c. shall be omitted, the Sheriff, &c. shall not return any person who hath not some Freehold Land out of ancient Demesn in the County. And shall also return six Hundredors upon like pain as aforesaid. Stat. 35 H. 8. c. 6.

And upon every Writ of *Habeas Corpora* or *Disfringas* with a *Nisi prius*, the Sheriff shall return Issues upon every person impanell'd at least 5 s. and upon a second Writ 10 s. and upon the third Writ 13 s. 4 d. and upon every further Writ double the Issues last specified, on pain of 5 l. *Ib.*

And on every such Writ of *Habeas Corpora*, &c. where a full Jury shall not appear, or if by Challenge the Jury remains untaken for default of Jurors, the Justices upon the Request of the Plaintiff or Defendant, are authoriz'd to command the Sheriff to appoint so many other able Persons of the County then present at the Assizes or *Nisi prius*, to serve, as shall make up a full Jury, who shall be added to the former Panel, and the Parties may have their Challenge to the Jurors added, as if they had been impanell'd upon the *Venire facias*, and the Trial had thereupon shall be as effectual as if such Trial had been by twelve Jurors impanell'd and return'd upon the *Venire*. And if such Talesman shall withdraw or refuse to serve, he shall be fin'd by the Justices, nevertheless such Persons as were return'd in the Panel and have made default, shall lose the Issues return'd upon them. *Ib.*

Provided that upon a reasonable Excuse for the default of Appearance of any Juror, the Justices upon the Oaths of two Witnesses, may discharge such Juror. *Ib.*

Provided also, that if the Justices shall not come at the Day appointed, but the Assize or *Nisi prius* shall be discontinued, then the Jurors shall not forfeit any Issues, and the Sheriff shall be discharg'd of the pains for not returning the Issues. *Ib.*

And if upon any such Writ of *Habeas Corpora*, &c. Issues be return'd upon any Hundredor who shall not be lawfully summoned or warned, every such Sheriff shall forfeit double so much as the Issues return'd shall amount un-

to, the Moiety of all Forfeitures in this Act other than the Issues return'd upon Jurors, shall go to the Crown, and the other Moiety to the Prosecutor, saving the right of all Persons to such Issues. *ib.*

Provided that this Act shall not extend to any City or Town Corporate, or to any Sheriff or Minister, for the Return of any Inquest or Panel therein, but they may return such Persons as they have been accustomed heretofore, so that they return upon such Persons like Issues as are before mention'd in this Act. *ib.*

Justices are authoriz'd upon Request made for the King or by the Party that prosecuteth as well for the King himself, upon a penal Statute to command the Sheriff to appoint (where there shall not be a full Jury) so many other able Persons then present at the Assizes, or to be added to the former Panel, as shall make up a full Jury. And every Clause in the aforesaid Act of 35 H. 8. shall give the same Advantage to the Crown and such Persons as shall prosecute for the King, &c. as the Plaintiff in any other Action might have by virtue of the said Act. *Stat. 4 & 5 P. & M. c. 7.*

The Act of 35 H. 8. cap. 6. for granting a Tales, extended to Wales, the Counties Palatine of Chester, Lancashire, and Durham. *Stat. 5 Eliz. c. 25.*

In all Cases where Jurors ought to have Lands of a Year, they shall from henceforward have Lands of the Value of 4 l. a Year, and if the Sheriff return any person who hath not 4 l. per Ann. he shall forfeit 20 s. *Stat. 27 Eliz. cap. 6. Jurors shall*

And upon every first Writ of Habeas Corpora, &c. the Sheriff shall return in Issues upon every person impanell'd ten Shillings at least, and on the second twenty Shillings, and upon the third thirty Shillings, and upon every further Writ double the Issues last specified, on pain of 5 l. upon returning less Issues. *ib.*

And if any Sheriff shall return any person who shall not be lawfully summon'd, he shall forfeit to such person turning Juror double the Value of the Issues set upon such Juror. *ib.*

And if any Sheriff, Sheriff's Deputy, Sheriff's Clerk, or Bailiff, of Franchise, shall receive any Sum or Reward, directly or indirectly, or any promise of any Money, Reward, or other Profit, for the sparing, not warning, or take a Bribe not returning any person to be a Juror, he shall forfeit 5 l. to be divided between the King and the Prosecutor. *ib.*

And no Challenge for the Hundred shall be admitted if two sufficient Hundredors appear upon the Trial of any Issue. *ib.*

Saving for \*  
Towns Cor-  
porate,

Provided that this Act shall not extend to any Juries or Issues in any City or Town Corporate, or other place privileg'd to hold plea, or to the twelve Shires of *Wales*. *Ibid.*

4 & 5 *W. & M.*  
c. 24. Jurors  
to have 10*l.*  
*per An.* Free-  
hold or Co-  
pyhold.

An Act of 16 & 17 *Car.* 2. for returning of able and sufficient Jurors being expir'd, it is hereby enacted, That all Jurors (other than Strangers upon Trials *per Medietat. linguae*) return'd for Trials of Issues join'd in the King's Bench, Common Pleas, or Exchequer, before Justices of *Nisi prius*, Oyer and Terminer, Goal Delivery, or General Quarter Sessions, shall have in their own Name, or in trust for them, within the County ten Pounds *per Ann.* above Reprizes of Freehold or Copyhold Lands and Tenements, or of ancient Demesne, or in Rent, or in all or any of the said Lands Tenements, or Rents, in Fee, Fee Tail, or for Life. And in *Wales* 6*l.* *per An.* as aforesaid. *Stat.* 4 & 5 *W. & M.* c. 24.

Or they may  
be challeng'd.  
Issues shall not  
be sav'd but  
by order of  
the Court.

And if any of a less Estate and Value shall be return'd, it shall be a good Cause of Challenge on his own Oath, of the truth of the Matter. And no Juryman's Issues shall be saved but by order of the Court or Judges before whom the Issue is to be try'd for some reasonable Cause proved in Court upon Oath. And such Issues shall be duly estreated and levied. *Ib.*

Form of the  
*Venire.*

The Form of the *Venire* for the future shall be *Rex, &c. Praecipimus &c. quod Venire fac. coram, &c. Duodecem liberos & legales homines de Viceneto de A quor. quilibet habeat decem librat. terre tenementor. vel Reditum per Ann. ad minus per quos, &c. & qui nec, &c.* *Ib.*

Sheriff to for-  
feit 5*l.* for re-  
turning Per-  
sons not qua-  
lified.

And the Sheriff, Coroner, &c. shall not return any to serve who have not 10*l.* or 6*l.* *per Ann.* as aforesaid, on pain of forfeiting 5*l.* to the Crown for every person otherwise return'd. *Ib.*

How Jurors  
shall be sum-  
mon'd.  
Sheriff excu-  
sing any, to  
forfeit 10*l.*  
Saving for  
Corporate  
Towns.

And no person shall be return'd to serve who has not been duly summon'd six Days before the Day he ought to appear, nor shall the Sheriff, Bailiff, &c. take Money to excuse the Appearance of any Juror summon'd or return'd, on pain of forfeiting 10*l.* to the Crown for every Offence, saving to Cities, Boroughs, and Towns Corporate, their ancient Usage of returning Jurors of such Estate and in such Manner as heretofore. *Ib.*

Talermen to  
have 5*l.* *p. An.*

Provided it shall be lawful to return any person on a Tales who shall have 5*l.* *per An.* in the County as aforesaid, and in *Wales* 3*l.* *Ib.*

And it is enacted, no Fee should be taken by any Sheriff, Clerk of Assizes, or any other person, for returning or upon the Account of any Tales return'd, on pain of forfeiting 10*l.* one Moiety to the Crown and the other



to the Prosecutor, to be recover'd by "Action of Debt, &c.  
*Ibid.*

And no Writ *de non ponendis in Assis & Juratis* shall be granted unless upon Oath that the Suggestions are true. And so much of this Act as relates to Jurors, shall be in force from the first of May 1693. for three Years, and to the end of the next Session. *Ib.*

If any Plaintiff or Demandant where the Cause shall be 7 & 8 W. 3. at Issue, shall sue forth or bring to the Sheriff a Writ of c. 32. If the *Venire facias*, upon which an *Habeas Corpora* or *Distingas* Plaintiff do with a *Nisi prius* shall issue, in order to trial at the Assizes, nor proceed to and shall not proceed to the trial of such Issue at the first trial at the Assizes after the *Tesse* of the *He Cor.* &c. then the Plaintiff or first Assizes Defendant (except where Views of Jurors are directed) if ter the *Tesse* of he shall think fit to try the said Issue at any other Assizes, the *He Cor.* a shall sue forth a new *Venire fac.* in this Form: *Quod de No- new Venire vo Venire facias coram, &c. duodecim. liberos & legales homi- shall issue. nes de Viceneto de Aquorum quilibet habeat decem librat terra te- nementor. vel redditum per Ann. ad minus per quos, &c. Et qui And every Ju- nec, &c.* And the rest of the Writ shall be after the anci- ror shall have ent Manner, whereupon a Writ of *He Cor.* &c. shall issue. 101. per An, And the ancient Fees as in the Case of a *Plur. Habeas Corpo- ra* shall be taken, and no more, and the Trial shall pro- ceed, and so *toties quoties* as the Case shall require. And if the Defendant or Tenant shall be minded to bring an Issue to trial by *Proviso*, he may of the issuable Term pre- So where the ceding such intended Trial, sue out a new *Venire facias* as Defendant afore said, by *Proviso*, as if there had not been any former shall proceed *Venire facias* sued out, and so *toties quoties* as the Matter to trial by shall require. *Ib.* *Proviso.*

And every such *Venire facias*, &c. and all Trials and Pro- ceedings thereupon, shall be valid in Law, and not be as- signable for Error. Stat. 7 & 8 W. 3. c. 32.

And the Sheriff, &c. to whom it shall appertain to re- Sheriff on a- turn the Talesmen, shall upon the awarding the Tales. re- warding Tales turn Freeholders or Copyholders of the County who are to return Free- returned on some other Panel, to serve at the same Assi- holders or Co- zes, and are then attending the Court, and not any o- pyholders re- thers, if so many can be found in Court; and such Tale- turn'd on o- men may be challenged as if they had been impanell'd up- ther Panels. on the *Venire*, and the Judge may proceed to trial with those Persons who were before impanell'd and return'd with these Talesmen so added to the Panel, and such Trial shall be good in Law. And if any such person so return'd upon the Tales being present at such Return Talesman re- made, shall be called and not appear, or after Appearance refusing to serve, withdraw himself from the said Service, the Judge of fin'd. Assize shall set a Fine upon him. *Ib.*

7 & 8 W. 3. c. 32. Constables at Michaelmas yearly to return Persons qualified to serve on Juries to the Sessions.

And all Constables, Tythingmen, and Headboroughs, and their Deputies, or some, or one of them, shall yearly at the general Quarter Sessions held the Week after Michaelmas, upon the first Day of the said Sessions, or upon the first Day it shall be held by Adjournment at any other particular Division or Place, give a true List in Writing of the Names and Places of Abode of all Persons within the respective Places for which they serve, qualified to serve upon Juries, with their Titles and Additions, who are above twenty one and under seventy Years of Age, to the Justices of Peace in open Court, which said Justices, or any two of them at the said Sessions, shall cause a Duplicate to be deliver'd of the said return'd List, by the Clerk of the Peace, to the Sheriff, or his Deputy, before the first of *January* next following; and shall cause the said Lists to be enter'd in a Book by the Clerk of the Peace, and kept among the Records of the Sessions. *Ibid.*

Copy of such Lists to be deliver'd to the Sheriff. Sheriff to return no others.

And no Sheriff shall impanel any Person to try an Issue in any of the said Courts, or to serve in any Jury at the Assizes, Sessions of Oyer and Terminer, Goal delivery, or Sessions of the Peace, that shall not be named in the said List; and any Constable, &c. failing to make such Return, as aforesaid, shall forfeit 5 *l.* to the King, to be recover'd by Bill, Plaint, or Information. *Ibid.*

How Jurors shall be summon'd.

Every Summons of any Person qualified to serve shall be made six Days before at the least, shewing to the Person summon'd the Warrant (under Seal of the Office) wherein he is nominated to serve; and if any Juror so to be summon'd is absent from his Dwelling, notice of such Summons shall be given by leaving a Note in Writing, under the Hand of the Officer summoning him, containing the Contents thereof, at the Dwelling-house of such Juror, with some Person there inhabiting. *Ibid.*

The said Return to the Justices shall be a good authority to the Sheriff for summoning and returning such Persons; and if any Action or Information shall be brought against any Sheriff for such Return, he may plead the general Issue, and give this Act in Evidence; and if the Plaintiff be cast, discontinue, &c. he shall pay treble Costs. *Ibid.*

Sheriff returning any other Persons than as aforesaid, to forfeit 20 *l.*

And if the Sheriff, his Deputies or Bailiffs, shall summon and return any Freeholder or Copyholder, to any of the aforesaid Services, otherwise than as aforesaid, or neglect his Duty in the Services requir'd by this Act, or excuse any Person for favour or reward, or allow of any Writ of *non ponendis* in Assizes, and Juratis, or other Writs to exempt any Person from serving on a Jury under 70 Years of Age, he shall forfeit for every Offence 20 *l.* to

the Party griev'd, or to him that will sue for the same, by Action of Debt, Information, &c. *Ibid.*

No Person shall be return'd or summon'd to serve upon Jurors in the any Jury, at the Assizes or general Goal delivery for the County of County of *York*, or at any Sessions of Peace to be holden *York* to serve for any part thereof (the City of *York* and County of the but once in said City, and Town and County of *Kingston upon Hull* four Years. excepted) above once in four Years; and every Sheriff shall keep a Book or Register, wherein the Names of all such Persons who have serv'd as Jurors, with their Additions and Places of Abode, and the Times and Places of such their Service, shall be alphabetically enter'd, which Registers shall be deliver'd over to the succeeding Sheriff of the said County within ten Days after he shall be sworn; and every Juror having serv'd at any Assizes, Goal Delivery, or Sessions, shall and may at the end of every such Assizes, &c. repair to the Sheriff or Under-Sheriff, and have his Name enter'd in the said Register, of which he shall also on request have a Certificate *gratis* from the Sheriff testifying his Attendance and Service done. *Ibid.*

Only one Panel consisting of 48 Freholders and Co-Grand Juries pyholders, and no more, (each Person having fourscore for the Coun-Pounds Lands *per Annum*) shall be return'd to serve on the ty of *York*, grand Inquest; and no more than ten Panels, consisting of 24 Jurors in each Panel, shall be return'd to serve upon Tryals in civil Causes at any Assizes for the County of *York* (except special Juries) and at no one Quarter-Sessions of the Peace holden for the said County, or in any of the Ridings, or in any Place where such Sessions shall be holden by Adjournment in the same County, shall be return'd above 40 Persons, to serve either upon the grand Inquest or other Service. *Ibid.*

The Inhabitants of the City and Liberties of *Westmin*-Inhabitants of *ster*, shall be exempted from serving on any Juries at the *Westminster* not Sessions held by the Justices of Peace of the County of *Mid*-to serve on *dlesex*. *Ibid.* Juries at the

The Act of 4 & 5 *W. & M. c. 24.* as to so much as re-Sessions of lates to the returning of Jurors, is hereby continued, to-Peace for gether with this Act for seven Years, from the first of *Middlesex*. May, 1696. and from thence to the end of the next Sessi-The Act of on of Parliament. *Ibid.* the 4 & 5 *W.*

Provided this Act, or the said Act, shall not extend to & *M. c. 24.* give or require a longer Time for summoning Juries that for returning are to try any Issues join'd, that are tryable by Jurors of sufficient Ju- the City of *London* or County of *Middlesex*, than was re-rors further quir'd before the making the said Act; nor shall give any continued. longer Time, or other Day, for the return of any Writ, Jurors sum- Precept, or Process of *Venire Facias*, *Habeas Corpora*, or *Di*-mon'd in



*London and Middlesex as formerly.* *stringas*, for the summoning, attaching, or distraining of any Jury to appear, than was by Law requir'd before the making the said Act. *Ibid.*

This Act not to extend to Corporate Towns. Provided that this Act shall not extend to the City of *London*, nor to any other County of any City or Town within this Realm; nor to any Town Corporate that have power by Charter to hold Sessions of Goal delivery, or Sessions of the Peace for such Town. *Ibid.*

8 & 9 W. 3. Whereas Lists of Jurors have not been return'd by the c. 10. Saving Constables to the Sessions in several Counties, as is requir'd by 7 & 8 W. 3. c. 32. It is hereby enacted, That it where Lists of shall be lawful at any time before the first of *November*, Jurors are not 1697. for the Sheriffs, &c. where such Lists have not return'd. been return'd, to make returns of Jurors in all Cases as they might have done before the making the said Act. Stat. 8 & 9 W. 3. c. 10.

The Sessions to issue Precepts for returning Lists of Jurors. And to the end the said Act may be put in execution, after *Michaelmas* 1697. the Justices of Peace are requir'd, at the Sessions holden before *St. Michael*, yearly to issue Precepts to the respective Constables, requiring them to make such return of Persons to serve upon Juries, as by the said Act is directed. *Ibid.*

1 Ann. c. 38. The Act made in the 7 & 8 W. 3. c. 32. for regulating Juries, &c. is hereby continued for seven Years. Stat. 1 Ann. c. 38.

*Torkshire.* No Person interested in such Estate, as will qualify him to serve on Juries, of the value of one hundred and fifty Pounds *per Annum*, or more, shall be return'd to serve on any Jury at the Sessions of the Peace for the County of *Tork*, on pain of 20 l. to be forfeited by the Sheriff, &c. *ib.*

3 & 4 A. c. 18. If any Sheriff of the County of *Tork*, shall neglect to keep such Register of Persons serving on Juries, as by the said Act of 7 & 8 W. 3. is directed, or shall neglect to make and deliver such Certificate *gratis*, as in the said Act is mention'd, he shall forfeit 100 l. to be divided between the Crown and the Prosecutor. Stat. 3 & 4 Ann. c. 18.

And if such Sheriff of the said County, his Bailiff, &c. shall knowingly summon or return any Person to serve on a Jury, who shall have serv'd within four Years before, and shall not upon producing such Certificate discharge the said Summons or Return, and give notice thereof to the Party six Days before the Assizes or Sessions, he shall forfeit 20 l. to the Parties summon'd. *Ibid.*

Warrants to Constables to make Lists of Jurors. And the Justices of Peace of all Counties or Ridings, shall yearly at the general Quarter-Sessions holden after *Midsummer*, issue their Warrants, under the Hands and Seals of two or more of them, to the chief Constables, requiring them to issue their Precepts to the respective pet-

by Constables, &c. requiring them to convene and meet together with their said head Constables within fourteen Days next after the Date of such Precept, at some convenient place in the Hundred, &c. when they shall prepare and make a true List, fairly written and sign'd by them, of the Names and Places of Abode of all Persons within their respective limits qualified to serve on Juries, according to the said Act of 4 & 5 W. & M. which List each Constable or Headborough shall yearly on the first Day To be re- of Michaelmas Sessions, return to the Justices in open turn'd yearly Court; and every high Constable failing to issue his pre- to the Michaelmas Sessions, to convene the Constables and Headboroughs, as elmas Sessions, afore said, shall forfeit 10 l. and every Constable or Head- on pain of borough failing to meet the high Constable, and to pre- 10 l. for the pare a List, as afore said, and to return it to the Sessions, default of the shall forfeit 5 l. and such high Constable, petty Consta- High Con- ble, &c. shall be prosecuted at the Assizes, Sessions of Oyer stable, and 5 l. and Terminer or general Goal delivery, or Sessions of the the Petty Peace, who are impower'd to hear and determine the same; Constable. and the said Acts of 4 & 5 W. & M. and 7 & 8 W. 3. the Acts to be Justices at their Midsummer Sessions yearly, shall cause to read yearly t be read in open Court. *Ibid.* the Sessions.

Every *Venue* for the Tryal of any Issue in the Courts 4 & 5 A. c. 16. of Record at *Westminster* shall be awarded of the Body of Jurors to be the County where such Issue is tryable; and no Challen- return'd of ges shall be admitted to the Arrays of Panels, or to the the Body of Polis for default of Hundredors. Stat. 4 & 5 Ann. c. 16. the County,

Provided that this Act shall not extend to Appeals of and no Chal- Felony or Murder, or to Indictments or Presentments of lence for want Treason, Felony, or Murder, or other Matter, or to any of Hundre- Process upon them, or to any Writ, Bill, Action, or In dors. formation upon any penal Statue. *Ibid.* Not to extend

In any Action brought in the Courts at *Westminster*, to criminal where it shall appear to the Court that it will be proper Cases. the Jurors who are to try the Issues should have the view Jurors to have of the Lands or Place in question in order to understand the View in the Evidence to be given at the Tryal, the Court may special Cases, order special Writs of *Disfringas* or *Habeas Corpora*, where- by the Sheriff shall be commanded to have six out of the first twelve of the Jurors therein nam'd, or a greater number, at the Place in question, before the Tryal, who shall have the Matters controverted shewn to them by two Persons in the Writs nam'd and appointed by the Two Shewers. Court; and the Sheriff shall by a special Return upon the same, certify that the View hath been had according to the said Writs. *Ibid.*

The afore said Acts for regulating Juries, made in the 10 Ann. c. 14. 4 & 5 W. & M. and 7 & 8 W. 3. and 1 A. are hereby fur- Acts continu- ther ed.

*Yorkshire.*

ther continued for eleven Years, and to the end of the next Sessions of Parliament. *Stat. 10 Ann. c. 14.*

And the Clause in the 7 & 8 *W. 3.* that no Person shall be return'd upon any Jury in the County of *York* above once in four Years, is declared not only to extend to Sessions of the Peace to be holden for the several Ridings, but also to any Sessions of the Peace that shall be holden by Adjournment for any part of the said Ridings. *Ibid.*

Provided that if any Person interested in such Estate, as shall qualify him to serve on Juries, of the value of 150 *l.* or more *per Annum*, shall serve as a Juror at any of the said Sessions of the Peace or Adjournment, he shall not be exempted thereby from serving at the Assizes or general Goal delivery, holden for the said County, for the term of four Years, or any other term. *Ibid.*

9 *Geo. c.*  
Apothecaries  
exempted.  
Acts conti-  
nued.

The several Acts for exempting Apothecaries from Parish and Ward Offices, and serving upon Juries, are made perpetual, and the Acts of 4 & 5 *W. & M.* and 3 & 4 *Ann.* for regulating Juries, &c. are continued from the expiration of the same for the space of seven Years, and from thence to the end of the next Session of Parliament. *Stat. 9 Geo. c.*

#### READINGS.

Derivation of  
the Word Ju-  
ry.

The Term Jury is said to be deriv'd from the *French* Word *Jurer, Jurare*, to swear, because it signifies those twelve Men that are sworn to try the Matter of Fact; and as the Judgment of the Court ought to be guided by the Law, so the Jury are to be guided by the Evidence.

Antiquity.

This Tryal by Juries is certainly of great Antiquity; but whether there was any such Tryals among the *Britons*, as some imagine, is very uncertain. The *Romans* who succeeded them were not acquainted with the Institution; and it was probably introduced either by the *Saxons* or *Normans*.

Number 12.

Sir *Edward Coke* seems much delighted (as he says the Law is) with the Number 12. He observes, that as there are 12 Jurors, so there were anciently 12 Judges for the Tryal of Matters of Law in the Exchequer Chamber; and 12 Privy Counsellors for Matters of State: And this Num-  
ber



ber he observes is much respected in Scripture; as 12 Apostles, 12 Tribes, &c. But whether there be any thing sacred in the Number 12, or whether 11 or 13 might not have serv'd the several Purposes as well I shall not examine, but proceed to more useful Observations of Sir *Edward's*.

And First, He takes notice that although the Sheriffs re- Words of the Writ be *Duodecim*, yet by the <sup>turn 24.</sup> ancient Course the Sheriff must return twenty four for the expedition of Justice; for if twelve only should be return'd, a Man would seldom have a full Jury appear, and in this Case Usage and ancient Custom makes the Law.

It was Error at Common Law if the Sheriff return'd less than twenty four; but this is remedied by the 18 *Eliz.* as a Misreturn, 1 *Cro.* 123. and if the Sheriff return but twenty three it will not vitiate the Verdict now, so that the Tryal be by ten of the principal Panel and two of the Tales; but the Sheriff is prohibited to summon more than twenty four by 13 *Ed.* 3. c. 28.

Where the Issue is to be try'd by two Coun- An equal ties, there ought to be six of each County; and Number from if there appear but one of one County, although two Counties. a full Inquest appear of the other, the Tryal cannot proceed. *Roll. Tit. Tryal.* 673.

To make a Jury in a Writ of Right, which is called the Grand Assize, there must be sixteen, <sup>16 Jurors in</sup> *scil.* four Knights, and twelve others; the Jury the Grand in Attaint, called the Grand Jury, must be twen- Assize. ty four. *Finch* 412, 485.

When Process us'd to be made out against the Witnesses for- Witnesses in *Carta nominat*, to join with the Jury merly added in the Tryal of the Deed, as was used before the to the Jury. Statute of 12 *Ed.* 3. c. 2. (his *Testibus*) being then part of the Deed, then the Number was uncertain according as the Number of Witnesses were in the Deed; wherefore no Attaint lay if the Deed were affirmed, because more than twelve join'd in the Verdict, but otherwise if the Deed was not found, because Witnesses cannot prove a Negative. *F. N. B.* 106. b. 1 *Inst.* 6. 2 *Inst.* 130, &c.

A Juror de-  
parts, another  
may be sworn.

There must  
be 12 on a  
Writ of En-  
quiry.

Jury struck  
by the Master.

Qualifications  
of Jurors.  
They must  
not be  
Relations.

Outlaws.

Infamous.

Perjur'd.

Stigmatiz'd.

Infidels.

Persons ex-  
empted from  
serving.

If twelve are sworn, and one of them depart by consent, another of the Panel may be sworn and join with the other eleven in the Verdict. 11 H. 6. 13.

A Judgment out of an inferiour Court was revers'd, because, being by default, the enquiry of Damages was only by two Jurors, and Custom alledg'd to warrant it; and it was resolv'd by the Court, that there cannot be less than twelve, though the Writ of Enquiry saith only *per Sacramentum proborum & legalium hominum*, and not *duodecim* as in a *Venire*. 1 Vent. 113.

*Trin. 8. W. 3.* A Rule was made in *B. R.* that when the Master is to strike a Jury, he should give notice to the Attornies on both sides to be present; and if one comes and the other does not, he that appears shall strike out twelve, and the Master shall strike out other twelve for him that is absent. *Salkeld* 405.

If it be not express'd in the Rule that the Master shall strike forty eight, and each of the Parties shall strike out twelve, the Master is to strike twenty four, and the Parties have no liberty to strike out any. *Ibid.*

As to the Quality of Jurors, they are in the first place to be *liberos*, that is, Freemen, not Villains or Aliens; and it is said they ought also to have such freedom of Mind as to stand indifferent, without any obligation of Interest, Affinity, or other Relation whatever, to either Party: They must also be *Legales*, not outlaw'd, or such as have lost *liberam legem*, or are become infamous, as Persons attainted of Felony, false Verdict, Conspiracy, Perjury, Premunire, or Forgery upon the Statute of 5 *Eliz. c. 14.* nor such as have had Judgment to lose their Ears, stand in the Pillory, or have been stigmatiz'd or branded, nor Infidels.

Noblemen are exempted from serving on Juries, and others may be exempted by the Writ *de non ponendis in Assisis*; also Infants, Sheriffs, Officers, Counsellors, Attornies, Clerks, and other Ministers of the King's Courts.

At the *Nisi Prius*, the Bailiffs of a Vill may<sup>By Charter,</sup> insist on their Charter to try Contracts within<sup>&c.</sup> the Vill by all Denizens, without Foreigners.

The King may grant one or two to be discharg'd of Juries, but not the whole Country, for by this Means there would be a failure of Justice; but the Grant shall not exempt any from serving in the King's Bench without express Words.

The Jurors ought to come in Person and claim Priviledge; Priviledge, the Sheriff cannot return it. *Tryals* how claim'd. *per Pais* 87.

The Statutes which require Jurors to be of Towns Corporate and such Sufficiency, do not extend to Jurors in Cities, Towns Corporate, or other privileged Places.

As to the Statute of 35 H. 8. c. 6. the Tryal To what Tryal ordain'd by that Statute lies only in such Actions al the 35 H. which have their ordinary Tryal by twelve Men<sup>8. extends.</sup> and not more, and by Writ of *Nisi Prius*; and this only in those Actions in which the Process of *Venire facias*, *Habeas Corpora*, and *Distingas* lie against the Jurors, and in no other Actions.

And although the Statute only mentions the Tryal of Issues join'd in the King's Courts commonly holden at *Westminster*, yet if the Action be commenc'd in any other Court, if the Issue be join'd in any of the Courts at *Westminster*, it shall be tryed according to the said Statute; and so if those Courts are remov'd from *Westminster*, the Issues join'd in them shall be tryed as the said Statute directs.

And the Words betwixt Party and Party shall only be intended of common Persons, and not betwixt the King and any other Person; nor when the King joins with any other Person in any Action, which by the Release or Pardon may be discharg'd before the Action brought.

In an Information of Intrusion, by the Queen, Juror must a Juror was challeng'd for insufficiency of Freehold, he had but to the value of 15 s. a Year: It hold. was adjudg'd that the Statutes H. 5. 27 Eliz. &c. extend only betwixt Party and Party, and not



Except in  
Corporate  
Towns.

to the Queen, and if he had any Freehold it was sufficient; but some Freehold he must have. *Cro. Eliz.* 38, 418. *Sir Christopher Blunt's Case.*

A *Quo Warranto* was brought against divers Persons of the City of *Worcester*, why they claim'd to be Aldermen, &c. of the said Corporation? The Cause came to be tryed at the Bar; and a Challenge was made to the Jury in behalf of the Defendants, for that the Jurymen were not Freeholders.

The Court said that for Juries in Corporate Towns it hath been held that the Statutes that have been made, requiring that Jurymen should have so much Freehold, do not extend to such Places, for if so, there might be failure of Justice for want of such Jurymen so qualified; but then to maintain the Challenge, it was said by the Common Law Jurymen were to be Freeholders: But the Court over-rul'd the Challenge. *1 Ventris.* 366.

A City may  
be exempted  
from serving  
on Juries.

It was held that the King might grant the Privilege to a City that they should be exempt from serving on Juries out of their own City; but it was agreed by all, that by such Grant they would not be exempt from serving in this Court *B. R.* unless there were an express Clause in the Charter that they should not serve *Coram ipso Rege.* *Sid.* 243.

Jurors anciently Knights.

Anciently the Jury, as well in Common Pleas as Pleas of the Crown, were twelve Knights, according to *Glanvil*, lib. 2. c. 14. and *Bracton*, fol. 116. See further the Qualifications of Jurors under Title *Challenge.*

Tryal per Mediatat. Lingua.

When one of the Parties is an Alien, and the other a Denizen, the Tryal shall be by an equal Number of Aliens and Denizens, as appears by the abovesaid Statute; but it is not necessary that those who are Aliens should be all Subjects of the same State; for if part of them are *French*, and part *Spaniards*, the Intent of the Act is answer'd. And the Form of the *Venire Facias* in this Case is; *De Vicenet, &c. Quorum una Medietas, sit de*

*de indigenis & altera Medietas sit de Alienigenis Natis, &c.*

Where both Parties are Aliens, the Inquest shall be all *English*; for though the *English* may be supposed to favour their Countrymen more than Strangers, yet when both Parties are Aliens it is presum'd they may be indifferent to both, 21 H. 6. 4. and where an Alien is Party, and the Jurors are all *English*, the Tryal is not erroneous; for if the Party slips his time, and does not insist upon being try'd by an equal number of Aliens and Denizens, it is at his peril, and he loses the Advantage the Law would have allow'd him. He ought to pray a *Venire Facias per Medietatem Lingua* at the time of the awarding the *Venire Facias*; but if he does it at any time before a general *Venire Facias* be return'd and fil'd, the Court may grant him a *Venire Facias de novo*. Dyer 144. 21 H. 7. Tryals per Pais 196.

If both Parties be Aliens, the Jury shall be all *English*.

Alien must claim his Privilege in time, or he loses it.

If the *Venire Facias* be *per Medietatem Lingua*, Tales must be the Tales ought to be *per Medietatem Lingua*: *per Medietat.* As if six Denizens and five Aliens appear of the *Lingua*. principal Jury, the Plaintiff may have a *Tales per Medietatem Lingua*, Lib. 10. 104. But if in this Case the *Tales* be general, *de Circumstantiis*, it hath been held good enough; for there being no Exception taken by the Defendant upon the awarding thereof, it shall be intended well awarded. 3 Cro. 818, 841.

If the Plaintiff or Defendant be Executor or Alien Executor, &c. though he be an Alien yet the Tryal shall be by *English*, because he sueth in *Auter droit*; but if it be averr'd that the Testator or Intestate was an Alien, then it shall be *per Medietatem Lingua*. 3 Cro. 275.

Mich. 40 & 41 Eliz. the Queen's Attorney ex-Aliens try'd hibited an Information against Barre and divers with others other Merchants, some whereof were *English*, loose their and some Aliens; after Issue, the Aliens prayed Priviledge, a Tryal *per Medietatem Lingua*; but all the Justices of *England* resolv'd, that the Tryal should be by all *English*, and likened it to the Case of Privi-

Priviledge, where one of the Defendants demands Priviledge, and the Court as to his Companion cannot hold Plea, there he shall be ousted of his Priviledge, *sic hic*. *Moor* 567.

By the Statute of 8 H. 6. c. 29. insufficiency or want of Freehold is no cause of Challenge to Aliens who are impanell'd with the *English*; (notwithstanding *Staunford's* Opinion, *Pl. Coron.* 160.) for this Statute saith, that the Statute 2 H. 5. c. 3. shall extend only to Inquests between Denizen and Denizen. *Tryals per Pais* 197.

Jurors to be  
of the Vici-  
nage.

The Jurors ought to come out of the Vicinage or Neighbourhood where the Fact in question is mov'd, because the Neighbours are suppoled to have a better knowledge of the Matter in Controversy than Strangers, and better acquainted with the Characters of the contending Parties; but late Statutes notwithstanding allow the Jurors to be summon'd out of the Body of the County in civil Causes, as to criminal indeed the Law stands as it did before.

If a Thing be alledg'd to be transacted in *D.* the *Venire* must not be of *D.* but *de Viceneto de D.* *Roll. Tit. Tryal* 622.

By whom  
Things trans-  
acted Beyond-  
Sea shall be  
try'd.

Matters done Beyond-Sea may be try'd in *England*: And therefore a Bond made Beyond-Sea may be alledg'd to be made in any Place in *England*, if it bear Date in no Place; but if there be a Place, as at *Bordeaux* in *France*, then it shall be alledg'd to be made in *quodam loco vocat Bordeaux* in *France*, in *Islington* in the County of *Middlesex*, and from thence shall come the Jury. 1 *Inst.* 261.

So when part of the Act is done in *England*, and part out of the Realm, that part that is to be perform'd out of the Realm, if Issue be taken thereupon, shall be try'd here by twelve Men, and they shall come out of the Place where the Writ or Action is brought. *Tryals per Pais* 102.

What Actions  
are local.

Questions concerning the Title of Lands, except there be a special Order of the Court to the contrary, shall be try'd in the County where the Land lies; for the Law is, that all real and mix'd

Actions;



Actions, as Waste, Ejectment, &c. must be brought in the County where the Land is; but Debt, Detinue, Accompt, Actions of the Case, Battery, &c. are in their own Nature transitory, and yet they ought to be laid and try'd in their proper County where the Fact was done, unless the Court order the contrary for some special Reasons; and if they are laid out of the proper County, daily practice tells us the Court may alter the *Venue*, upon Affidavit of the true Place of the Fact. What transitory.

All criminal Matters are to be try'd where the Criminal Offence is committed. Criminal Causes.

If the *Venue* arise in two Counties, the Jury *Venue* in two upon two *Venire Facias*'s shall come from both, Counties. six out of one County, and six from the other, 3 *Cro.* 646. But by consent of Parties enter'd upon Record, it may be by five out of one, and seven from the other, as appears 3 *Cro.* 471.

It is said a Jury cannot be charg'd, or meddle with a Matter of Law; and if they do, and find it, their Verdict as to this will be void; but daily Experience shews us, that they may and do take upon them, as well the knowledge of the Law as of the Fact, and give a general Verdict, wherby the Parties are concluded as to both. If the Jury may determine Matter of Law.

In many Cases the Jury are to inquire of the Knowledge and Intent of a Man; as where the Declaration is, that the Defendant kept a Dog which killed the Plaintiffs Sheep, *Sciens Canem suum ad Mordendos oves consuetum*, though *Sciens* be not traversable, yet the Jury upon Evidence must enquire of it. *Tryals per Pais* 187. Must enquire of the Intent.

In some Cases a Jury may try and find a spiritual Thing, as a Divorce, Matrimony, &c. and must take notice thereof upon pain of Attaint. *Ibid.* Special Matters.

The Jury may find Bastardy; but if it be pleaded, it must be try'd by a Certificate. *Ibid.*

So they may find a Divorce; for it is not Matter of Record, but a Matter in *Fait*. *Ibid.*

The Jurors of one County may find any transitory Thing done in any other County, May find some Facts in some.

a Foreign  
County.

Sometimes they must find local Things in another County; as if the Heir pleads *riens per Discent*, and the Plaintiff replies Assets in a Parish and Ward within *London*, the Jury may find Assets in any County. The same Case against an Executor who pleads *plene Administravit*, the Jury may likewise find Assets in any part of the World: And the Reason is because the Place is only named for necessity of Tryal; but where the Place is part of the Issue it is otherwise. And therefore if I promise in one Place to do a Thing in another, and Issue is upon the Breach, the Jury ought to come from the Place of the Breach; but if I promise in *London* to do a Thing at *Bordeaux* in *France*, and Issue upon the Breach, yet this shall be try'd in *London* for necessity, because otherwise it would want Tryal; the Jury must enquire of the Breach at *Bordeaux*; but if I promise in *France* to do a Thing in *France*, so that both Contract and Performance is Beyond Sea, this wants a Tryal in Law. *Tryals per Pais*. 188.

Jurors not to  
eat or drink  
till they have  
given their  
Verdict.

The Jurors shall neither eat nor drink after they are sworn till they have given their Verdict, without leave of the Court: And if they eat or drink at the charge of either Parties, and give a Verdict for the same Party, it is sufficient cause to move in Arrest of Judgment; but if they eat or drink at their own charges, though this be finable, it shall not avoid the Verdict. 1 *Inst.* 227. b.

Or hear any  
Evidence af-  
ter they are  
withdrawn.

If Money be given to the Jury, it makes their Verdict void, 1 *Leon.* 18. And if the Plaintiff after Evidence given, and the Jury departed from the Bar, or any for him, do deliver any Letter from the Plaintiff to any of the Jury, concerning the Matter in Issue, which was not given in Evidence, it shall avoid the Verdict if it be found for the Plaintiff, but not if it be found for the Defendant, & *sic e Converso*: But if the Jury carry away any Writing unseal'd, which was given in Evidence in open Court, this shall not

avoid

avoid their Verdict, albeit they should not have carried it with them.

Or have any Writing un-  
seal'd with  
them.  
How the Jury  
shall be kept.

By the Law of *England* a Jury after their Evidence given upon the Issue, ought to be kept together in some convenient place without Meat or Drink, Fire or Candle, (which some Books call an Imprisonment) and without Speech with any, unless it be the Bailiff, and with him only if they be agreed. After they be agreed they may in Causes between Party and Party, give a Verdict, and if the Court be risen, give a privy Verdict before any of the Judges of the Court; and then they may eat and drink, and the next Morning in open Court they may either affirm or alter their privy Verdict, and that which is given in Court shall stand. But in Criminal Cases of Life or Member, the Jury can give no privy Verdict but they must give it openly in Court. *Tryals per pais* 201.

Privy Verdict.

None in Criminal Cases.

A Jury sworn and charg'd in case of Life and Member, cannot be discharg'd by the Court, unless the Prisoner consent to it without giving their Verdict. *Tryals per pais* 202. 2 *Hawk.* 439.

Jury sworn in Criminal Cases can't be discharg'd

In Trespass by *Mounson* against *West*, the Jury was charg'd and Evidence given, and the Jurors being retir'd into a House for to consider of their Evidence, they remained there a long time without concluding any thing, and the Officers of the Court who attended them, seeing their delay, search'd the Jurors if they had any thing about them to eat, upon which Search, it was found that some of them had Figs, and others Pippins, for which the next Day the Matter was mov'd to

without giving a Verdict. Jurors who eat at their own charge before a Verdict given, shall be fin'd, but the Verdict will be good.

the Court, and the Jurors were examined upon Oath, and two of them did confess they had eaten Figs before they had agreed of their Verdict, and three others confess'd that they had Pippins, but did not eat of them, and that they did it without the Knowledge or Will of any of the Parties. And afterwards the Court set a Fine of 5*l.* upon each of them which had eaten, and upon the others which had not eaten 40*s.* But upon great Advice and Consideration had, and Conference with the



rest of the Judges, the Verdict was held to be good, notwithstanding the said Misdemeanor. *1 Leon. 133.*

May be carried along with the Judge. If the Jurors cannot agree in their Verdict, the Justices may carry them in Carts along with them till they are agreed. *Ib.*

Must examine no Witness out of Court. The Jury may not examine any Evidence out of Court after they are gone from the Bar, and where one of the Witnesses gave the same Evidence to the Jury he had before given in Court, it was held, that this alone made the Verdict void. *Qu. Cro. 189.*

The Parties may not speak to the Jury. If one of the Parties say to the Jury after they are gone from the Bar, you are weak Men, it is as clear of my side as the Nose in a Man's Face. This is new Evidence, for his Affirmation may much perswade the Jury, and therefore shall quash the Verdict. *Ib.*

So if any of the Party's Servants speak to the Jury, and the Verdict goes for his Master, it may be quash'd, but if for the other side, 'tis only fineable. *1 Keb. 300.*

So if any thing be read to them which they ought not to have with them, as a Book of Depositions, some whereof were read in Evidence. *Pratt's Case. 21 Jac.*

Juror departing, another sworn. If a Juror depart after he is sworn, he shall be fin'd and imprison'd, and by assent of the Parties another Juror may be sworn. *Bro. Jurors 46.*

May be treated after Verdict. A Treat from the Plaintiff after a privy Verdict given, and before it is given in open Court, shall not avoid the Verdict. *Tryals per pais 211.*

Pain of striking a Juror. One struck a Juror in *Westminster-Hall* who had given a Verdict against him while the Court was sitting, and was sentenced to be imprison'd in the Tower for Life, to have his Right Hand cut off, and his Lands seiz'd into the King's Hands. *41 Aff. 25.*

Jurors Lands chargeable with Issues. Where Issues are return'd upon a Juror, his Lands are chargeable, and any Man's Cattle upon his Lands in which he has a Freehold, may be distrained for them. *Tryals per pais 220.*

Where

Where the Jurors give a false Verdict upon an Judgment in Issue join'd in any Court of Record, and Judg. Attaint for a ment thereupon, the Party griev'd may bring false Verdict. his Writ of Attaint in the *King's Bench* or *Common Pleas*, upon which twenty four of the best Men of the County are to be Jurors, who are to hear the same Evidence which was given to the *petit* Jury, and as much as can be brought in affirmance of the Verdict, but no other against it. And if these twenty four who are call'd the Grand Jury, find it a false Verdict, then followeth this terrible Judgment at Common Law, upon the *petit* Jury.

1. That they shall lose *liberam legem* for ever, that is, they shall be so infamous as they shall never be receiv'd to be Witnesses or of any Jury.

2. That they shall forfeit all their Goods and Chattels.

3. That their Lands and Tenements shall be taken into the King's Hands.

4. That their Wives and Children shall be thrown out of Doors.

5. That their Houses shall be ras'd and thrown down.

6. That their Trees shall be rooted up.

7. That their Meadow Grounds shall be plough'd up.

8. That their Bodies shall be cast into Goal, and the Party shall be restored to all that he has lost by reason of the unjust Verdict.

It was resolv'd by all the Judges upon a full Jury not si- Conference at *Serjeants Inn*, that a Jury is not si- nable for go- nable for going against their Evidence where an ing against E- Attaint lies. And it is evident by several Reso- vidence or a- lutions of all the Judges, that where an Attaint gainst the Di- lies, the Judge cannot fine the Jury for going a- rection of the- gainst their Evidence or the Direction of the Court. Court.

And where an Attaint doth not lie, as in Criminal Cases upon Indictments, &c. my Lord *Vaughan* held, that the Court could not fine a Jury at Common Law. The Reasons he gave for this were, that the Judge cannot fully know up-

*Vaughan's Reason* for what Evidence the Jury gave their Verdict; for they may have other Evidence than what is shewed in Court. They are of the Vicinage, the Judge is a Stranger. They may have Evidence from their own personal Knowledge, that the Witnesses speak false, which the Judge knows not of; they may know the Witnesses to be stigmatiz'd and infamous, which may be unknown to the Parties or Court. *Ib.*

And if the Jury knew no more than what they heard in Court, and so the Judge knew as much as they, yet they might make different Conclusions, as oftentimes two Judges do, and therefore as it would be a strange and absurd thing to punish one Judge for differing with another in Opinion or Judgment, so it would be worse for the Jury who are Judges of the Fact, to be punish'd for finding against the Direction of him who is not Judge of the Fact. *Ib.*

**Fining Jurors,** And the fining and imprisoning Jurors for giving their Verdict, hath several times been declar'd in Parliament an illegal and arbitrary Innovation, and of dangerous Consequence to the Government and the Lives and Liberties of the Subject. *2 Keb. 180. 1 Keb. 162.* And as the Ju-

**The Jury may** take upon them Matter of Law as well as Fact, and give a general Verdict. ry may find a special Verdict and leave the Law to the Court, so they may upon the Matter take upon them the Knowledge of the Law, and give a general Verdict, wherein they resolve both the Law and the Fact complicately. But according to Sir *Edward Coke*, if they do take upon them the Knowledge of the Law, and give a general Verdict, and happen to be mistaken, it may be of dangerous Consequence, for then it seems they are liable to an Attaint. But this is a Proceeding so entirely disus'd at this Day, that the Terror of it is not like to restrain Jurors from venturing to give a general Verdict even contrary to Law and the Opinion of the Court. *Ib.*

**Attaint dis-** us'd. are liable to an Attaint. But this is a Proceeding so entirely disus'd at this Day, that the Terror of it is not like to restrain Jurors from venturing to give a general Verdict even contrary to Law and the Opinion of the Court. *Ib.*

**All the Jurors** must agree. Every one of the twelve Jurors must agree, or there can be no Verdict; and Verdicts ought to be so certain, that the Court may give Judgment clearly upon them: Therefore Verdicts finding Matters



Matters incertainly or ambiguously, are insuffi- The Verdict  
cient and void, and no Judgment shall be given must be cer-  
thereupon. As if an Executor plead *plene admi-* tain.  
*nistravit*, and Issue is join'd thereon, and the Ju-  
ry find that the Defendant hath Goods within his  
Hands to be administred, but find not to what  
Value, this is an Uncertainty, and therefore an  
insufficient Verdict. *Lib. 9. 74. 1 Inst. 227.*

A Verdict that finds part of the Issue and finds Must find the  
nothing for the rest, is insufficient for the whole, whole Issue.  
because they have not tried the whole Issue where-  
with they are charg'd. As if an Information of  
Intrusion be brought against one for intruding  
into a Messuage and an Hundred Acres of Land,  
upon the general Issue the Jury find against the  
Defendant for the Land, but say nothing for the  
House, this is insufficient for the whole; but if  
the Jury give a Verdict of the whole Issue, and  
of more, &c. that which is more is Surplusage,  
and shall not stay Judgment for *Utile per inutile*  
*non Vitiatur.* *Leon. 1. Part 66. Cro. Part 1. 130.*  
But necessary Incidents required by Law, the Ju-  
ry may find. *Siderf. 232.*

In many Cases the Jury ought to find more Jury must as-  
than is put in Issue, otherwise their Verdict is sess Damages,  
not good, and therefore they are to assess Dama- or the Verdict  
ges and Costs, because it is parcel of their Charge, is not good.  
as a Consequent upon the Issue, though it be not  
part of the Issue *in terminis.* *Tryals per pais 237.*

But if the Jury do assess more Damages than  
the Plaintiff declares for, the Plaintiff may remit Plaintiff may  
the Overplus and pray Judgment for the Residue, remit the  
as in the Tenth Report *F. 115.* In Trespass the Overplus.  
Plaintiff declar'd *ad dampnum*, &c. 40*l.* at the  
Trial the Jury assess'd Damages *Occasione trans-*  
*gressionis predict.* ad 49*l.* and for Costs of Suit  
20*s.* upon which Verdict the Plaintiff at the Day  
in Bank remitted 9*l.* parcel of the said 49*l.* as-  
sess'd for Damages, and pray'd Judgment for 40*l.*  
(to which Damage he had counted) with increase  
of Costs of Suit, and had 9*l.* *de incremento* ad-  
ded by the Court, which in all amounted to 50*l.*  
and had his Judgment accordingly, upon which a

Increase of  
Costs.

Writ of Error was brought and the Judgment affirm'd. *Tryals per pais* 245.

For as in real Actions the Demandant shall not count to Damages, &c. because it is incertain to what Sum the Damages will amount, by reason he is to recover Damages *pendant le brief*; so in the Case of Costs he shall recover for the Expences depending the Suit, which being uncertain, cannot be comprehended in the Count, because the Count extends to Damages past, and not to Expences of Suit. For in personal Actions he counts to Damages because he shall recover Damages only for the wrong done before the Writ brought, and shall not recover Damages for any thing *pendant le brief*. But in real Actions the Demandant never counts to Damages, because he is to recover Damages also *pendant le brief* which are incertain. *Ib.*

Costs and Damages  
assess'd  
entire.

The Jury may if they will, assess the Damages and Costs entirely together, without making any Distinction. 18 *Ed. 4. c. 23.* But then they must not assess more Damages and Costs than the Damages are which the Plaintiff counts to; for if they do the Plaintiff shall recover only so much as he hath declar'd for, without any increase of Costs; because the Court cannot distinguish how much they intended for Cost and how much for Damage. *Ib.*

Jury have

leave to drink at the Bar after the Evidence is given, and before in Court after the Verdict, if the Plaintiff and Defendant will the Evidence. consent unto it. *Pasch. 23 Car. B. R.* But they may not drink out of the Court. A Jury had leave to drink at the Bar after a long Evidence in a very hot Day by the Consent of the Plaintiff and Defendant. *Styles prac. Regif. 337.*

Jury return'd  
in London.

It is the Custom of *London*, in an Action of Waste, to return the Jurors out of the four next Wards to the place wasted. 2 *Saund. 252, &c.*

Juror may not  
go from the  
Bar without  
leave.

After a Juror is sworn, he may not go from the Bar until the Evidence is given, for any Cause whatsoever, without leave of the Court, and al-

tho'

tho' he have leave he must have a Keeper with him, so cautious is the Court to prevent all Suspicion of *sinister* Proceedings in the Trial of Causes. *Pasch. 24 Car. B. R.*

The Jury ought not to have any Writing with them when they go from the Bar which hath not been proved, altho' such Writing hath been given in Evidence unto them; for tho' it be given in Evidence, yet if it be not proved, nothing can be directly concluded from it, and therefore the Jury is not to have it to guide their Conscience by. *Mich. 24 Car. B. R.*

Jury may have no Writing with them that hath not been prov'd.

The Jury cast Lots for their Verdict, and Jury fin'd for set aside without any other Punishment to them. casting Lots, *2 Lev. 140, 205.*

The Jurors that appear at a Trial shall not have their Charges allow'd them if the Cause be not try'd for want of Jurors. *Pasch. 1652. B. R.* For their Appearance is of no Benefit to any Body, and therefore it is no Reason they should receive any Recompence. *Ib.*

Jurors have no Charges allow'd if the Cause be not try'd.

## Justices of Peace.

**I**N every County good and lawful Men, which are not maintainers of evil or Barretors, shall be assign'd to keep the Peace. *Stat. 1. Ed. 3. c. 16.*

There shall be assign'd good and lawful Men in every County to keep the Peace, and at the time of such Assignments, mention shall be made, that those who are indicted, or taken by the said Keepers of the Peace, shall not be let to main prize by the Sheriff, if they are not mainpernable by Law: And that such as are indicted, shall not be delivered but by common Law; and the Justices of Goal-delivery, are impower'd to deliver the Goals of those who are indicted before the Keepers of the Peace, to whom the said Keepers shall send their Indictments, and the said Justices of Goal-deliverys shall enquire if the Sheriffs and Jaylors have made Deliverance, or let to main prize, any who are so indicted, and are not mainpernable, and punish the said Sheriffs, &c. accordingly. *Stat. 4. Ed. 3. c. 2.*

*1 Ed. 3. c. 16.*

Justices of Peace first instituted.

*4 Ed. 3. c. 2.*

Sheriffs not to bail persons committed by

Justices of peace;

but they shall be imprison'd

till the Jail-Delivery.



18 Ed. 3. c. 2. Two or three Persons of the best Reputation in the County shall be assign'd to keep the Peace, and when Justices of Peace to enquire of Felonies and Trespasses, and inflict reasonable Punishment, according to Law and the nature of the Fact. *Stat. 18. Ed. 3. c. 2.*

34 Ed. 3. c. 1. There shall be assign'd in every County one Lord, and three or four of the most worthy Gentlemen, with some learned in the Law, to keep the Peace, who are empower'd to restrain Rioters and other Barretors, and to arrest and punish them according to their Demerits. *Stat. 34. Ed. 3. c. 1.*

And the Offences to which their Authority extends. They are also to enquire of Vagabonds, Robbers and Persons of evil Fame, and to arrest and commit them, or take Surety for their good Behaviour: And they are also authoriz'd to hear and determine all Felonies and Trespasses done in their County; and Writs of *Oyer and Terminer* shall be granted, according to the Statutes; and the Justices thereto assign'd, shall be named by the Court, and not by the Party, and the Fines set by the said Justices, shall be reasonable, and just, and suitable to the Trespass committed. *Ibid.*

36 Ed. 3. c. 12. In the Commissions of Justices of the Peace, mention Sessions to be held 4 times a Year. shall be made that they hold their Sessions four times in the Year, viz. once within the *Utas* of the *Epiphany*; the 2d. within the second Week of *Lent*; the 3d. between the Feast of *Pentecost* and *St. John Baptist*, and the 4th within eight Days after *Michaelmas*. *Stat. 36. Ed. 3. c. 12.*

12 R. 2. c. 10. In every Commission of the Peace, there shall be but six Justices assign'd with the Justices of Assizes; and the said six Justices shall hold their Sessions every Quarter, on pain of being punish'd at the Discretion of the King's Council, and they shall take for their Wages 4 s. a Day during their Sessions, and their Clerk 2 s. out of the Fines and Amerciaments incur'd: And no Steward of any Lord shall be put in the said Commissions, nor any Association made to the Justices of Peace, after their first Commissions. *Stat. 12. R. 2. c. 10.*

Wages 4 s.  
Day.

Provided that Judges, and Serjeants at Law shall not be oblig'd to attend the Quarterly Sessions. *Ibid.*

13 R. 2. c. 7. Justices of Peace shall be made of the most sufficient Quality of Knights, Esquires, and Gentlemen of the Law of the County, notwithstanding the abovesaid Statute, which prohibits the Steward of any Lord to be in Commission.

14 R. 2. c. 11. *Stat. 13. R. 2. c. 7.*

Eight Justices There shall be eight Justices of the Peace in every County, and the *Estreats* of the said Justices shall be double, *and*

and one part be delivered by the Justices to the Sheriff to levy the Money arising thereby for their Wages, and no Duke, Earl, or Baron, shall have any Wages for the said Office. *Stat. 14. R. 2. c. 11.*

The Justices of Peace who are of the *Quorum* shall be 2 *H. 5. c. 4.* resident in the same County, except Lords, Judges, Ser- Justices of jeants at Law, and the King's Attorney; and they shall *quorum.* hold their Sessions four times a Year, *viz.* in the first Quarterly Ses- Week after *Michaelmas*, the first Week after *Epiphany*, the sions. first Week after *Easter*, and the first Week after the Trans- lation of *St. Thomas a Becket*, and oftner if need be: And the said Justices are authoriz'd to examine all Labourers, Artificers, Servants and their Masters upon Oath, and to punish them for Offences against the Statutes of Labou- rers, &c. *Stat. 2. Hen. 5. c. 4.*

The Justices of Peace in every County shall be the 2 *H. 5. Stat. 2.* most sufficient Persons dwelling therein, and be made by *c. 1.* the Advice of the Chancellor and the King's Council; Justices of and Persons dwelling out of the County are excluded, Peace to be except Lords Justices of Assize, and the King's chief Resident. Stewards of Lands and Seniories in the Dutchy of *Lan- caster.* *Stat. 2. Hen. 5. c. 1.*

Justices of Peace in the County of *Middlesex* shall not be oblig'd to hold their Sessions above twice in the Year. *14 Hen. 6. c. 4.* *Stat. 14. Hen. 6. c. 4.*

No Justice of Peace shall be made who hath not Lands or Tenements of the Value of 20 *l.* a Year: And if any Person be put in Commission who hath not Lands of that Value, he shall give Notice to the Chancellor, who shall put another in his Room; and if he do not give Notice within a Month after he knows of such Commission, or if he sit or make any Warrant or Precept by force of such Commission, he shall forfeit 20 *l.* to be divided between the King and the Prosecutor, and be put out of Commis- sion. *Stat. 18. Hen. 6. c. 11.* *14 Hen. 6. c. 4.* *Middlesex.* *18 Hen. 6. c. 11.* Justices of Peace to have Lands of the Value of 20 *l.* per Annum.

Provided that this Act do not extend to Towns Cor- Saving for porate, or to such Counties where there are not Persons of Corporate such sufficiency as aforesaid; but in that Case, the Chan- Towns. cellor may put other discreet Persons learned in the Law, in such Commissions. *Ibid.*

Every Justice of the Peace shall certify, send, or bring 3 *Hen. 7. c. 1.* the Recognizances taken by them, to the next Sessions of Recognizan- the Peace, and if the Party make default, the same shall ces to be cer- be there recorded, and the Recognizance, with the Re- tify'd to the cord of the Default, shall be certify'd into the Chancery, Sessions. King's Bench, or Exchequer. *Stat. 3. Hen. 7. c. 1.* *3 Hen. 7. c. 3.*

Two Justices of Peace *quor. un'* are empower'd to bail Two Justices Persons who are bailable by Law, until the next general may bail per- Sessions sons bailable.

Sessions or Goal Delivery, whither they shall certify the same, on pain of 10 l. Stat. 3. Hen. 7. c. 3.

4 Hen. 7. c. 12. Justices of Peace are hereby required to put the Laws in execution, on pain of being put out of the Commission of the Peace, and further punish'd according to their Demerits. Stat. 4. Hen. 7. c. 12.

7 Jac. 1. c. 5. In every Action brought against a Justice of Peace, Mayor, Bailiff, Constable, or other Officer, or against any other who in their Aid or Assistance, or by their Commandment, shall do any thing concerning their Offices, He and they may plead the general Issue, not guilty, and give the special Matter in evidence, and if a Verdict pass for the Defendant, he shall have double Costs.

3 W. & M. c. 4. Stat. 7 Jac. 1. c. 5. *Wales,*

The Clause in the 34 & 35. H. 8. by which Justices of Peace in *Wales* are limited to eight in each County is hereby repealed, and the Crown is impower'd to constitute such a Number of Persons to be Justices of Peace in the said Counties of *Wales*, as shall be thought requisite.

3 & 6 W. & M. c. 11. No *Certiorari* to remove a Cause from the Sessions in Term time, but upon Motion and Rule of Court of B. R.

Defendant to give Security to plead to Issue, &c. and try the Cause the next Assizes.

Recognizance to be return'd with the *Certiorari* into the Court of B. R.

No *Certiorari* shall hereafter be granted in Term time at the Prosecution of any Party indicted, to remove any Indictment or Presentment of Trespass or Misdemeanor, before Tryal had from before the Justices of Peace in their Courts of General or Quarter Sessions, unless such *Certiorari* be awarded upon Motion of Council, and by Rule of the Court of King's Bench. Stat. 5. & 6. W. & M. c. 11.

And the Party indicted, procuring such *Certiorari*, shall before the Allowance thereof, enter into a Recognizance of 20 l. with two sufficient Sureties before a Justice of Peace of the County or Place, with Condition, at the return of such Writ, to appear and plead to such Indictment or Presentment in the King's Bench, and at his own Cost, procure Issue to be joined thereupon, or upon any plea relating thereto, to be try'd at the next Assizes for the County, after the return of the *Certiorari*; and if it be in *London* or *Middlesex*, to be try'd the next Term if the King's Bench shall not appoint another time, and to give due Notice of such Tryal, to the Prosecutor or his Clerk, in Court. *Ibid.*

And the said Recognizances shall be certify'd into the King's Bench, with the *Certiorari* and Indictment, to be there fil'd, and the Name of the Prosecutor (if he be the party griev'd) or some publick Officer, endors'd on the Indictment; and if the person procuring such *Certiorari*, being the Defendant, shall not enter into such Recognizance as aforesaid, the Justices may proceed to trial of the Indictment, notwithstanding such Writ of *Certiorari* deliver'd. *Ibid.*

And



And if the Defendant procuring such *Certiorari* be convicted, the King's Bench shall give reasonable Costs to the Prosecutor, if he be the party injur'd: Or if he be on Conviction a Justice of Peace, Mayor, Constable, or other Civil Officer who prosecuted upon any Fact committed that concerned him or them as Officers, to prosecute or present. *Ibid.*

And Costs shall be taxed according to the Course of the said Court, and the Prosecutor, for Recovery of the said Costs, shall within ten Days after, demand and issue in default of the Payment of them upon Oath, have an Attachment granted against the Defendant, by the said Court, for his Contempt, and the Recognizance shall not be discharg'd till such Costs are paid. *Ibid.*

Provided that in Vacation time, a Writ of *Certiorari* may be granted by any of the Justices of the King's Bench, whose Name, with the Name of the party procuring it, shall be indors'd on the Writ, and such Recognizance as aforesaid, shall be enter'd into, before the allowance thereof. *Ibid.*

And on every *Certiorari* granted in the Counties Palatine of Chester, Lancaster, or Durham, the same Rules shall be observ'd, as to finding Sureties, &c. and the Indictment try'd at the next Assizes for the said respective Counties, &c. and Costs had as above, *Ibid.*

Provided that if any Indictment or Presentment be against any Person, for not repairing Highways, Causeys, Pavements, or Bridges, &c. and the right of repairing the same come in question, upon such Suggestion and Affidavit of the Truth thereof, a *Certiorari* may be granted, to remove the same into the King's Bench, so that the Parties procuring such *Certiorari*, enter into such Recognizance with Sureties as aforesaid. *Ibid.*

The said Act of 5 & 6 W. & M. c. 11. to prevent delays of Proceedings at the Quarter Sessions made perpetual. Stat. 8 & 9 W. 3. c. 33.

And after the 21st of April 1697, the party prosecuting any *Certiorari*, to remove an Indictment or Presentment from the Quarter Sessions, may find two sufficient Manucaptors before one of the Judges of the King's Bench, in the same Sum, and under the same Condition, as is required by the said recited Act, whereof mention shall be made on the back of such Writ under the Hand of the Judge taking the same; which shall be as effectual to stay or supersede any further Proceedings upon any Indictment or Presentment for the removal of which a *Certiorari* shall be granted, as if the Recognizance was taken before a Justice of Peace of the County: And it shall be added

Condition of the Recognizance shall be to the Condition of every Recognizance, that the party prosecuting such *Certiorari*, shall appear from Day to Day, in the Court of King's Bench, and not depart until he to appear from shall be discharg'd by the said Court. *Ibid.*

Day to Day, No *Certiorari* shall be allow'd to remove any Proceedings before a Justice of Peace, concerning the destruction of the Game, unless the party accus'd before the allowance thereof, become bound in the Sum of 50 *l.* to pay Cost, to remove proceedings before a Justice, for destroying the Game, till 50 *l.* Security given.

Peace defined.

Breach of Peace.

Commission of the Peace.

Authority of one Justice by the first Clause.

By Peace in our Law, is understood an abstaining from all injurious Force and Violence, and for the maintenance of this Peace, Justices of Peace were first instituted by the abovesaid Statute of the 1 *Ed.* 3. c. 16. The Peace is said to be broken by any injurious Force or Violence mov'd against the Person, Goods, Lands, or Possessions of another, whether it be by threatening Words, furious Jesture, force of the Body, or any other force us'd *in terrorem*.

Justices of Peace are generally constituted by Commission under the Great Seal, at the Discretion of the Lord Chancellor, or Lord Keeper.

The first *Assignavimus* or Clause in the Commission impowers any one Justice of Peace to cause the Peace to be kept, and all Ordinances and Statutes to be observ'd, which are made for the Conservation thereof, and for the quiet Government of the People: As the Statute made for Hue and Cry; the Statute against Murderers, Robbers, Felons, Night-walkers and Affrayers: Against Armour worn *in terrorem*, Riots, forceable Entries, and all other Force and Violence directly against the Peace, as may be seen under their proper Heads.

To prevent the breach of the Peace, such Justice may send his Warrant for the Party, and take sufficient Sureties by Recognizance, for keeping the Peace, or for his good Behaviour, as the Case shall require, and may send the

### READINGS.

the P  
but t  
to be  
one  
pel t  
Offer  
and c  
a Ju  
may  
auth  
no e  
Lett  
T  
gives  
or m  
the f  
1.  
men  
2.  
sent  
3.  
ther  
4.  
form  
selv  
afte  
5  
and  
acco  
Fin  
Lav  
Par  
But  
the  
A  
Jus  
of  
by  
chi  
Ba  
an  
Co

the Party to Goal for not finding such Sureties, but the Statutes made for the Peace are strictly to be pursued, and if no Power be given to any one Justice of Peace alone, then can he not compel the Observation thereof, but may present the Offence at the Sessions, in order to have it heard and determined there. And according to *Dalton*, a Justice of Peace, by Virtue of his Commission, may execute any Statute, whereunto he shall be authoriz'd by such Commission, altho' there be no expresse power given to him by the Words or Letter of the Statute. *Dalton, c. 5.*

The second *Assignavimus* in the Commission, gives Authority to any two Justices of the Peace or more, one of them being of the *Quorum*: In the five following Articles. Authority given to two or more by the second Clause.

1. To enquire by a Jury, of all Offences mention'd within the Commission.

2. To take and view all Indictments or Presentments of the Jury.

3. To grant out process against the Offenders, thereby to cause them to come and answer.

4. To hear and try all such Offences (upon any former or future Indictments, taken before themselves, or before any other Justices of the Peace) after the Offenders be come in.

5. To determine thereof by giving Judgment, and inflicting Punishment upon the Offenders, according to the Laws and Statutes; to wit, by Fine, Imprisonment, or otherwise, according to Law, but not to award any Recompence to the Party wrong'd, otherwise then by persuasion. But these particulars are properly the Business of the Quarter Sessions.

A single Justice of Peace may commit another One Justice of Peace for Treason, Felony, or breach of the Peace. may commit another.

The Authority given to Justices of the Peace by the Statutes, and usually exercised by them, chiefly concern Alehouses, Apprentices, Badgers, Bail, Bakers, Bastards, Beer and Ale; Carriages, and prizes of Land Carriages; Church-wardens, Constables, Cottages, Cursing and Swearing; The Offences concerning which, Justices usually exercise their Authority.  
Drun-



## JUSTICES of PEACE.

Drunkenness, Excise, Felonies, Forceable Entry and Detainer; Fore-stallers, Games not lawful; the Game, and Game Keepers; Guns, Grey Hounds, Setting Dogs, Ferrits, Snares, Nets, Hares, Partridges, Pheasants, Pidgeons, Hawks, Fish, Deer, &c. Goats, Hackney Coaches, Hedge breakers, Highways, and Surveyors of Highways; Houses of Corrections, Labourers, Leather, Lords-day; Defaults about Money, Poor, &c. as setting them to work, settling them in a Parish, or removing them from a Parish; and Overseers of the poor, Papist's Rates and Parish Taxes; Regrators, Riots, robbing Orchards, &c. Servants, Soldiers, and providing Carts and Carriages for them upon their March; small Tithes, Treasurers of the County; Vagabonds and Vagrants; Wages, Waggons and Waggoners, Weights and Measures, Wood-stealers and destroyers of Timber or other Trees, &c.

Mayors and head Officers of Towns corporate, their Authority.

And there are several Statutes, which empower Mayors and Head Officers of Corporations, to act as Justices of Peace, within their several Limits, and also to see the assize of Ale and Beer observ'd; as also the assize of Wood, Billet and Faggot, and of Beer Vessels, and other Vessels.

And to put in execution the Laws relating to Trade, Artificers, &c. which will be found under their proper Heads.

The Ministerial power of Justices of Peace, upon a Supplicavit.

The power of Justices of the Peace, is either Ministerial or Judicial: Ministerial when they are commanded to do any Act by a superior Authority; as upon a Supplicavit out of the Chancery or the King's Bench, for taking Sureties for the Peace or good Behaviour, or upon a Writ upon the Statute of *Northampton*, in case of a forcible Entry, in the execution of which Writ, the Justice of Peace can proceed no farther, or otherwise than he is authoriz'd thereby, and must return the Writ, and certify what he has done thereupon, into the Court from whence the Writ issues, as he must also upon a *Certiorari* out of the Courts at *Westminster*, to certify any Recogni-

*Certiorari.*

zance

zance, Indictment, or other Record taken before him or them, or in his or their Hands.

In all other Cases, the Justices of Peace act as <sup>Their judicial</sup> Judges, but they must proceed according to their <sup>power how ex-</sup> Commission, and the several Statutes from which <sup>ercised.</sup> they derive their Authority: Some of these refer several Matters to the Discretion of the Justice of Peace, either in or out of the Sessions; for Example,

One Justice of Peace may compel any per- <sup>Things refer'd</sup> son, meet in his Discretion, to be bound Appren- <sup>to the Discre-</sup> tice; he may cause all such persons as be fit to <sup>tion of one</sup> labour, to work in Harvest and Hay time; Tres- <sup>Justice of</sup> passers in Corn, Orchards, Hedges and Woods, <sup>Peace.</sup> which in his Discretion, are not able to make Satisfaction, he may cause to be whipt.

Two Justices may at their Discretion, allow <sup>To two Ju-</sup> or discharge Ale-house-keepers; they may take <sup>stices.</sup> Recognizances of Ale-house-keepers, for keeping good Orders.

Servants, &c. assaulting their Masters, may be imprison'd for one Year, or less, at the Discretion of two Justices.

Two Justices may (by their Discretion) compel Women to serve, and for such Wages, and in such sort as they think fit.

Two Justices may tax any in the Hundred by their Discretions, towards the Relief of the Poor of any Town that is overchag'd.

Two Justices may dispose of all Forfeitures, to grow upon the Statutes of Rogues, at their Discretions.

Two Justices may assess (according to their Discretions) proportionably, all the Parishes within the Hundred, towards a Contribution to the Parties charg'd upon a Robbery, &c.

Two Justices shall take Order (by their Discretion) to set poor Soldiers, &c. to work, that cannot get Work, and for want of Work, may tax the Hundred (by their Discretions) for the Relief of such Soldiers, &c.

Two Justices may fine (by their Discretions) the Head Officers in Boroughs and Market Towns,   
 I that

that do not view, &c. all Weights and Measures, or do not break or burn the defective.

The Discretion of the Justices, how limited and understood.

Two Justices may fine (by their Discretions) all Buyers and Sellers with unlawful Weights and Measures, and several other Cases are left to the Discretion of the Justices out of their Sessions, but this Discretion ought to be limited and bounded by the Rules of Reason, Law and Justice; and their proceedings must be *secundum Legem, & consuetudinem Angliæ*, and not according to their own private Opinions. In all Cases therefore, where the Statutes refer the Tryal of Offenders, to the Discretion of a Justice or Justices of Peace out of Sessions, it is requisite, that the said Justices take due Examination of the Offenders, themselves; and also of credible Witnesses, as well concerning the Fact itself, as the Circumstances thereof; and upon Confession, or other due proof, to proceed according to Law and Justice, and not to give Sentence, before the party be cited and heard to answer for himself: And in all Cases, where the Statutes refer the Tryal to the Discretion of the Justices, they seem also to authorize the Justices to take Examination of Witnesses upon Oath.

The power of Justices out of Sessions greater than the antient Conservators of the Peace.

Justices of Peace out of Sessions, are held to have a more ample Authority than the antient Conservators of the Peace had, for they may convene the Offender before them by their Warrant, and in many Cases, hear and determine the Cause, and compel the Observance of their Orders and Decrees, whereas the antient Conservators of the Peace, had no Authority to convene the Offender before them, or to hear and determine the Cause, but only a coercive power to punish the Offenders, in some few cases.

Justice may exercise his Authority only in the County. Not in Corporate Towns.

The Authority of a Justice of Peace is to be exercised only within the County where he is appointed by his Commission; nor must he intermeddle in any City there, which is a County of itself, nor in any other City or Town Corporate, tho' it be no County of itself, which have their proper Justices of the Peace within themselves, by the



the King's Charter or Commission, especially if in such Charter there be any special Words of Prohibition that the Justices of the Shire, *non se intromittant*, &c. except such Country Justice, be also in Commission for such City or Town Corporate.

But in other Corporate Towns which have not their proper Justices of Peace; as also in all Liberties and Franchises (within the County) which have the Return of Writs, but have not their proper Justices, there the Justices of the Peace of the County ought to execute their Authority; and that by the Words of their Commission.

If a Parish extends into two Counties, or if part thereof lye within the Liberty of a City, and part without, the respective Justices shall intermeddle only within their own proper Districts; nor shall any Justice of Peace proceed in or punish any Trespass, or such like Offence committed in another County against a penal Statute, unless where such Statute enables him so to do; nor can any Justice of Peace, while he makes his Abode, or continues out of the County where he is in Commission, intermeddle to take any Recognizance, or any Examination, or otherwise to exercise his Authority in any Matter that shall happen within the County where he is in Commission; neither can he cause one to be brought before him out of the County where he is in Commission into the other County; *but in case of a Robbery, the Person robb'd frequently makes Oath of the Robbery before a Justice of Peace of the County while he resides in London, and such Oath is held sufficient to satisfy the Statute, if the Justice have his principal Residence in the County.*

Parish in two Counties.

Justice can't punish an Offence done in another County.

Nor act when he is out of his County.

It is a Rule that whatever one Justice of Peace alone may do in the execution of his Office, the same may be done by two or more Justices; but where the Law gives Authority to two, there one alone is excluded. Nevertheless, where a Statute appoints a thing to be done by two Justices

Where one or more Justices may act alike;

One Justice may grant a Warrant for the Offender where he can't hear the Cause.

A Thing appointed to be done by one certain Person cannot be done by more.

Surety for the Peace defin'd.

In what Cases a Justice may command Sureties for the Peace.

Justices of Peace or more, if the Offence be against the Peace, upon complaint made thereof to any one Justice of Peace, he may grant his Warrant to arrest the Offender, and bring him before him or any other Justice of Peace, to find Sureties for his appearance at the next general Sessions, to answer such Offence; or he may bind the Offender to his good Behaviour at his discretion.

There seems to be a general Rule establish'd in *Stradling's Case*, *Plowden* 206. That when a thing is appointed by a Statute to be done by or before one certain Person, such thing cannot be done by or before another, but ought to be done as the Statute appoints; and by an express designation of one, or power given to one certain Person, all others are excluded.

Surety for the Peace, is the acknowledging a Recognizance or Bond to the King, before a competent Judge of Record for keeping of the Peace.

A Justice of Peace upon his own motion, and at his discretion, may command Surety of the Peace to be found in the following Cases: First, If an Assault or Affray be made upon the Justice of Peace himself, he may cause the Offender to be arrested and carried before another Justice of Peace, who may commit him to Prison 'till he hath found Sureties for the Peace. Secondly, If any one make an Affray upon another in his presence, or shall strike or assault, or offer to strike another, the Justice may commit him 'till he find Sureties for the Peace. So if any one in his presence and hearing, shall threaten to kill, beat, or hurt another, or to burn his House; or if any one shall go arm'd offensively, or with an unusual number of Servants and Attendants; or if Servants or Labourers shall bear any Weapons contrary to the Statute of 12 R. 2. the Justices of Peace may commit them 'till they find Sureties for the Peace.

And if any Man out of the presence of a Justice of Peace, shall threaten, or attempt, or go about to kill, maim, or beat another, and be brought

brought before a Justice of Peace, he may compel him to find Sureties for the Peace.

If any one has receiv'd a Wound, the Justice of Peace may take Surety of the Peace, both of the one, and of the other. He may also bind to the Peace common Barretors or Rioters. *Dalton* c. 116.

If one who stands bound to keep the Peace, hath broken the Peace and forfeited his Recognizance, the Justices of Peace ought to bind him a-new with better Sureties; but this ought not to be done until the Party be convicted of the breach of the Peace upon his Recognizance: And where one stands bound to keep the Peace, if his Sureties be insufficient, the same Justice, or another Justice of Peace may compel him to find better Sureties.

If a Justice of Peace (upon his own discretion) shall cause one to be arrested to find Sureties for the Peace, and shall after let him go without taking Surety or binding him to the Peace, yet the Party hath no remedy; for an Action will not lye against a Justice of Peace for this, he being a Judge of Record. See 9 H. 6. f. 60. 9 Ed. 3. f. 3. *Bro. Judges* 2, 10. and *Bro. Faux. Imp.* 12.

At the request of another, a Justice of Peace may command the Surety of the Peace, and may grant his Warrant for it; but he ought first to take an Oath of the Party to this purpose, *viz.* at the request That he standeth in fear of his Life, or of some bodily Hurt to be done to himself, or of having his Houses burnt; and that he doth not crave the Peace for any private Malice or Vexation, but of very fear, and for the needful safety of his Person or Houses. And if any Man is threatned to be hurt, that is, to be beaten, wounded, maim'd or kill'd, he may have the Surety of the Peace against the Person so threatning; and so if he have any other substantial reason to fear any hurt to his Person by another, or that his House would be burnt; or if he have reason to fear that another will procure such hurt to be done to his Person or Dwelling: But if one threaten

If the Justice grant Sureties for the Peace of another, he ought to take an Oath that he goes in fear of bodily Hurt, &c.



to burn the Goods of another, or to imprison him, 'tis said Surety of the Peace shall not be granted, because the Party griev'd may recover his Damages by Action, *tamen Quere.*

Not to be  
granted for a  
Battery pass'd.

And where one is in fear that another will hurt his Servants or Cattle, Surety of the Peace shall not be granted; nor shall it be granted in any case but where there is a fear of some present or future Danger, and not merely for a Battery or Trespass, or a breach of the Peace that is past; for these the Party wrong'd may have his Action, or punish the Offender by Indictment.

Or where 'tis  
demanded for  
Vexation.

And if the Justice of Peace observe that the Surety for the Peace is demanded merely of Malice or Vexation, without any just Cause, he may safely deny it; but if a Man will take his Oath that he is in fear, where he is in no fear, this Oath will discharge the Justice: And if the Justice apprehend that the Party craved the Peace only out of Malice or for Vexation, he may bind him to his good Behaviour if he sees fit.

A Nobleman  
need not give  
Sureties.

A Nobleman cannot be compell'd to give Sureties for the Peace by a Justice of Peace; but the Party put in fear may have a *Subpœna* out of Chancery, and there it is said such Nobleman may be bound to the Peace. And Surety of the Peace may be granted by a Justice against all other Lay Persons under the Degree of a Baron. And Ecclesiastical Persons, if they are not attending Divine Service, may also be arrested for the Peace, and shall be bound with Sureties. And one

May be grant-  
ed against a  
Fellow Justice.

Justice may grant this Surety against his Fellow Justices, or may demand Surety of the Peace at the Hands of his Fellow Justice against another Man.

A Wife may  
demand it  
against her  
Husband, &c.

A Wife may demand Surety against her Husband, if he threaten to kill her, or beat her outrageously, or if the Wife have any sufficient cause to fear he will do so. And the Husband for the like Causes may demand sufficient Sureties of the Peace against his Wife.

An Infant.

An Infant under fourteen may demand Sureties of the Peace; and Sureties for the Peace may  
be

be demanded against him. But an Infant, or a Feme Covert cannot be bound by themselves, but by their Sureties only; and if they cannot find Sureties, they shall be committed to prison till they do find them. But cannot be bound themselves.

Also this Surety of the Peace may be granted against an impotent Person, although he be such a one as is not like to break the Peace himself, for he may procure another to kill or beat one; and the common Form of the Recognizance is to bind a Man from procuring hurt, as well as from doing hurt. Against an impotent Person.

A Precept or Warrant to find Sureties for the Peace must be in Writing under the Seal of the Justice, if the Party be absent, and must be directed to some Officer, or other indifferent Person, and contain the Cause, and at whose Suit the Peace is demanded, to the intent the Party may bring his Sureties with him; and when the Party comes before the Justice by Virtue of such Warrant, or any other like Warrant, for the Peace, good Behaviour, Riot, &c. he must offer Sureties to the Justice of Peace, or he may be committed to prison; for the Justice need not demand Sureties of him: And if the Party, before, or after he be brought before the Justice, refuse to find Sureties, the Officer without any new Warrant may carry the Party to prison by the Words of the first Warrant; and will be punishable by the Justices of Peace for his neglect by Indictment and Fine at the Sessions if he let the Party go: And the Person arrested may also have his Action of false Imprisonment for the Arrest; for where the Officer doth not pursue the direction of his Warrant, that will not indemnify him for what he has done. Warrants for Surety of the Peace how executed.

21 H. 7. 23. a. *False Imprisonment if the Officer discharge the Prisoner without Authority.*  
3 H. 7. f. 3. b. *Brian & Bro. Faux. Imp. 21.*

If the Party is present, the Justice may command him to find Sureties for the Peace by word of Mouth.

When a Man fears the Surety of the Peace will be demanded against him in the Country, or hears that such a Warrant for the Peace is already Surety given before another Justice, or in B. R. a Superfedeas.

dy granted out against him by a Justice of Peace; it seems in either of these Cases, he may go and give Surety of the Peace before any other Justice of the Peace of the same County where he dwelleth, and thereupon may have a *Superseas* from the Justice of Peace, &c. and such *Superseas* is sufficient without naming the Sureties or Sums wherein they are bound. And one may, either before, or after he is bound in the Country, give Surety for the Peace either in the King's Bench or Chancery, to restrain the Justices of Peace from taking any Surety of the Peace of him; and if the Justices of Peace shall not surcease after a *Superseas* out of Chancery or the King's Bench deliver'd to them, an Attachment will lie against them for their Contempt; and they may be fin'd and imprison'd.

Sufficiency of Sureties in the discretion of the Justice, where he acts judicially.

And how long the Party shall be bound.

Can't be pardon'd.

But the Forfeiture may.

Discharg'd by the King's Death.

Or either of the Parties.

If a Justice take a Recognizance for the Peace by Virtue of the Writ of *Supplicavit*, he ought to pursue the directions of the Writ; but if he take a Recognizance *ex Officio*, by Virtue of his Commission as a Judge, and not as a Minister, then it is wholly in his discretion to appoint and allow the number of Sureties, their Sufficiency in Goods or Lands, and the Sum of Money in which they shall be bound; and to limit the Time how long the Party shall be bound, with such other Circumstances.

The King cannot release or pardon the Surety of the Peace, nor such Recognizance taken in the behalf of any of his Subjects until it be forfeited, for the Mischief that may come to the Party thereby; but being forfeited, then the King, and none other, may release and pardon the Forfeiture.

But the Death (or Resignation) of the King dischargeth this Surety of the Peace taken by his Subject; for the Recognizance is to keep the Peace of the King (then being), and when he is dead, &c. it is not his Peace. *Br. Surety 20.*

Also the Death of the Recognizor (*scil.* of the Party principal that is bound) dischargeth his Surety



Surety of the Peace and the Recognizance. See 21 *Ed.* 4. 70. and 15 *H.* 7. 2 and 13.

Also the Death of the Party at whose Suit the Peace was taken dischargeth the Recognizance, if it where to keep the Peace against him alone.

But the Death of the Surety shall not discharge the Recognizance; neither shall the Party principal be compell'd to find new Sureties after their Death.

Such a Recognizance for the Peace may be forfeited by any actual Violence to the Person of another, whether it be done by the Party himself, or his procurement: Also it may be forfeited by Treason against the King, or by any unlawful Assembling to the terror of the People, or by Words directly tending to the breach of the Peace; as by challenging one to fight him, or threatening a Man to beat him to his Face: But it will not be forfeited by Words of bare Heat or Choler; as by calling a Man Knave, Lyar, Rascal, Drunkard, &c. nor shall any one forfeit such Recognizance for bare Trespasses in anothers Lands or Goods, unless it be accompanied with some Violence to the Person; nor shall it be forfeited in any Case where the Intent of the Party was lawful or commendable, or design'd only as an Exercise or for Sport, or where any hurt is done by meer negligence or mischance.

By what acts such Recognizances are forfeited.

As to finding Sureties for the good Behaviour, it has been held in the Construction of the above-said Statute of 34 *Ed.* 1. that where the Statute speaks of those who are not of good Fame, it intends only such as are defamed and justly suspected of an Intention to break the Peace, and does not extend to those who are guilty of other Misdemeanors not relating to the Peace. But it seems to have been the better Opinion, that a Man may be bound to his good Behaviour for many other Causes which affect his Fame, and are contrary to good Manners only; as for haunting Bawdy Houses with Women of ill Fame, or for keeping bad Women in his own House; or for speaking Words of Contempt of an inferiour Ma-

Sureties for the good Behaviour.

In what Cases to be taken.

## JUSTICES of PEACE.

Magistrate, as a Justice of Peace, or Mayor of a Town, &c. though he be not then in the actual execution of his Office; or of an inferiour Officer of Justice, as a Constable, and such like, being in the actual execution of his Office.

What shall be a Forfeiture of a Recognizance for the good Behaviour.

But no one ought to be bound to his good Behaviour for any rash, quarrelsome, or unmannerly Words, unless they tend directly to a breach of the Peace; or to affront the Government by abusing those who are intrusted by it with the Administration of Justice, or to deter an Officer from doing his Duty: However much is left to the discretion of the Justice in taking Sureties for the good Behaviour; and such a Recognizance for the good Behaviour will be forfeited for any actual breach of the Peace, for which a Recognizance for the Peace will be forfeited: Also it will be forfeited by going arm'd with great Numbers, to the terror of the people, or speaking Words tending to Sedition, &c. and for any such Misbehaviours as are intended to be prevented by such Recognizance. *Cro. Car.* 499.

How Warrants by a Justice of Peace shall be executed.

A Warrant by a Justice of Peace can be executed only by the persons to whom it is directed, or some of them, unless it be directed to the Sheriff, who may either by Parol, or by Precept in Writing, authorize an Officer sworn, and known to serve it, but cannot impower any other Person without a Precept in Writing. *1 Hawk.* 128.

If the Warrant be made in the common Form, directing the Officer to cause the Party complain'd of to come before some Justice of Peace to find sufficient Surety, &c. and if he shall refuse so to do, to convey him immediately to prison, without expecting any further Warrant, until he shall willingly do the same, &c. The Officer who serves it, before he makes any arrest, ought first to require the Party to go with him and find Sureties according to the purport of the Warrant; but upon his refusal to do either, he may carry him to the Goal by force of the same Warrant, without more. *Ibid.*

If

If the Warrant specially direct that the Party shall be brought before the Justice who made it, the Officer ought not to carry him before any other: But if the Warrant be general, to bring him before any Justice of Peace, &c. the Officer has the election to bring him before what Justice he pleases, and may carry him to prison for refusing to find Surety before such Justice. *Ibid.*

Every Warrant must be under the Hand and Seal of the Justice; and if it issues out for the Peace or good Behaviour, it must contain the special Matter, as has been observ'd already.

A Recognizance is a Bond of Record acknowledged to the King, upon a Condition to pay a certain Sum of Money if the Condition be not perform'd.

A Mittimus is a Precept in Writing directed to the Goaler, under the Hand and Seal of the Justice, for the receiving and safe keeping of an Offender in Prison until he be deliver'd by Law; and must contain the Cause of the Commitment. A Mittimus made by order of Sessions need not be under Hand and Seal.

One or more Justices of the Peace cannot upon a bare surmize grant a Warrant to break open a Man's House to search for a Felon or stol'n Goods, 4 *Inst.* 176, 177. but for breaches of the Peace Doors may be broken open to apprehend an Offender.

A sworn Officer need not shew his Warrant; but he ought to acquaint the Party with the Contents of it.

By the 1 & 2 *P. & M. c.* 13. Justices of Peace are to certify Examinations taken of Homicide or Felony to the Justices of Goal delivery, which reason the Sessions do not proceed to determine any considerable Felonies, but only Petit Larcenies, and such other small Felonies: However in all Cases they must take the Examination of Felons, and commit them to prison; and bind over the Prosecutors to the Assizes, and certify of all their Proceedings thither.

If



Where the  
Warrant will  
not justify the  
Officer.

If a Justice of Peace grants a Warrant in Cases beyond his Authority, the Officer must obey; but if it be where he has no jurisdiction, or in a Cause where he is not properly Judge, the Officer is punishable if he execute such Warrant: As where a poor Rate is illegally assess'd, and afterwards levied by Warrant from a Justice, this would not excuse the Churchwarden.

Felons after  
Examination  
to be com-  
mitted or  
bail'd.

After Examination of a Felon, and Information taken of those who bring him, the Justice must commit such Felon to Goal, or bail him if he be bailable; but then there must be two Justices together, and one of them of the *Quorum*. *Dalton c. 11.*

Witnesses  
bound over  
to the Assizes.

And the Justice must bind by Recognizance the Informers, and all such as do declare any thing material to prove the Felony, to appear and give Evidence against the Felon at the next general Goal delivery, to be holden within the County, City, or Town Corporate, where Tryal of the said Felony shall be. *2 P. & M. c. 10. Dalton c. 11.*

Justice to cer-  
tify the Ex-  
amination,  
&c. to the  
Assizes.

If the Justice of Peace shall not certify such Examinations and Informations to the next Goal delivery; or if the Justices of Peace shall not certify their Bailment, or shall not bind over the Informers to appear, and to give Evidence against the Felon at the next general Goal delivery, as aforesaid, the said Justices of the Peace shall be fin'd for every such Default or Offence at the discretion of the Justices of Goal delivery. *Ibid.*

Petty Larce-  
nies to be cer-  
tified to the  
Sessions.

But if it be for Petty Larceny, or other small Felonies, determinable at the Sessions, the Justices of Peace may bind over the Informers, and may certify the Examinations and Informations to the next quarter Sessions of the Peace. *Ibid.*

The Power  
of the Justices  
how deter-  
min'd.

The Power of a Justice of Peace may be determin'd: 1. By a Discharge under the Great Seal. 2. By a *Supersedeas*. 3. By granting a new Commission, of which those who are left out must take notice after publication thereof at the Sessions. 4. By an accession to a new Office; as  
by

by being made Sheriff or Coroner. And Lastly, By the Demise of the King or Queen; but by the first of *Ann. c. 8.* all Officers Civil and Military are authoriz'd to continue to act in their several Offices and Employments for six Months after such Demise, unless sooner discharg'd by the Successor.

Leases.

**N**ONE shall take to farm for term of Life or Years, 25 H. 8. c. 13. or at Will, by Indenture, Copy of Court Roll, or None to take otherwise, any more Tenements of Husbandry, whereunto above two any Lands are belonging, then two, in any Town, Vil- Farms. lage, &c. nor shall hold two, except he dwell in the Parish where such Tenements be, on pain of forfeiting 3 s. 4 d. per Week, to be divided between the Crown and the Prosecutor, who shall sue for the same within one Year after the Offence committed. *Stat. 25 H. 8. c. 13.*

All Leases made of any Manors, Lands, Tenements, 32 H. 8. c. 28. or Hereditaments, by Writing indented under Seal, for term of Years, or for Life, by any Person of one and twenty Years of Age, having any Estate of Inheritance in Fee Simple or Fee Tail, in his own Right, or in the Right of his Church or Wife, or jointly with his Wife, shall be good against the Lessor, his Wife, Heirs, and Successors, according to the Estate compriz'd in such Lease. *Stat. 32 H. 8. c. 28.*

Provided that this Act shall not extend to Leases of Lands, &c. in the Hands of any Farmer by Virtue of an old Lease, unless the same be expir'd, surrendred, or ended within one Year after the making such new Lease; nor shall extend to the grant of the Reversion of any Lands, &c. nor to the Lease of any Lands, &c. which have not commonly been letten to Farm for 20 Years next before such Lease made; nor to any Lease made without impeachment of Waste, or for more than one and twenty Years, or three Lives, from the Day of making thereof: And there shall be reserv'd upon such Lease to the Lessors, their Heirs and Successors, so much yearly Rent or more as hath been usually paid for the Lands, &c. so let within twenty Years before the making thereof; and the Persons in Reversion after the Deaths of such Lessors, or their

Leases made by Tenant in Tail, or by Persons seiz'd in Right of their Wives or Churches good. But not where an old Lease is in being. Nor to extend to Reversions. Nor to Lands which have not been usually letten. Or to Leases for more than three Lives, Full Rent reserv'd.

their Heirs, shall have the like remedy against the Lessees thereof, their Executors and Assigns, as the Lessor himself might have had. *Ibid.*

**Wife must be a Party to a Lease of her own Lands.** Provided that the Wife be made a Party to every Lease that shall be made by her Husband of any Lands, &c. being the Inheritance of the Wife, and such Lease be made by Indenture, and she to seal the same; and that the Rent be reserv'd to the Husband and Wife, and the Heirs of the Wife, according to her Estate in the same. *Ibid.*

**Husband not to discharge the Rent.** And the Husband shall not alien, grant away, or discharge such Rent reserv'd, or any part thereof, longer than during the Coverture, but by Fine levied by the Husband and Wife; but the same Rent shall remain and come after the Death of such Husband, to such Persons and their Heirs, as the said Lands should have done if no such Lease had been made. *Ibid.*

Provided that this Act shall not empower any Person to take more Farms or Leases of Lands, &c. than he might have done before the making this Act; nor shall extend to empower any Parson or Vicar to make any Lease or Grant of any Messuages, Lands, Tenements, Tithes, Profits, or Hereditaments, otherwise than they might have done before the making of this Act. *Ibid.*

**Fine by the Husband alone shall not discontinue the Wives Estate.** And no Fine, Feoffment, or other Act, made, done, or suffer'd by the Husband only, of any Lands, &c. being the Inheritance or Freehold of his Wife, shall make any discontinuance thereof, or be prejudicial to the Wife, or her Heirs, or to those who shall have any Right or Interest to the same by the Death of such Wife; but that they may lawfully enter into such Lands, according to their respective Rights and Titles therein, notwithstanding Fines levied by the Husband and Wife excepted. *Ib.*

**Wife shall not avoid a Lease made according to this Act.** Provided that this Act do not extend to enable any Wife, or her Heirs, to avoid any Lease to be made of the Inheritance of the Wife, by her and her Husband for the term of twenty one Years or under, or for the term of three Lives, whereupon as much yearly Rent is reserv'd, as was at any time paid within twenty Years before the making such Lease, according to the tenor of this Act. *Ibid.*

**1 Eliz. c. 19.** All Estates made by any Archbishop or Bishop, of any Leases by Bishops for more than 21 Years void. All Estates made by any Archbishop or Bishop, of any Manors, Lands, &c. belonging to their Bishopricks, or any Charge or Incumbrance out of them, shall be void, other than for the term of twenty one Years, or three Lives, from such time as any such Grant or Assurance shall be made; whereupon the old accustom'd yearly Rent, or more, shall be reserv'd. *Stat. 1 Eliz. c. 19.*



All Leases, Grants, Conveyances, or Estates, made by the Master and Fellows of any College, Dean and Chapter of any Cathedral or Collegiate Church, Master or Guardian of any Hospital, Parson, Vicar, or other, having any ecclesiastical Living, or any Houses, Lands, &c. more than 21 parcel of the same, or of any other spiritual Promotion, Years, void. to any Person or Persons other than for the Term of one and twenty Years, or three Lives, from the time any such Lease or Grant shall be made, whereupon the accustom'd yearly Rent or more shall be reserv'd, shall be void. *Ib.*

Provided that this Act shall not extend or be construed to make good any Lease or other Grant to be made by any such College or Collegiate Church in either of the Universities or elsewhere, for more Years than are limited by the private Statutes of the same. *Ib.*

No Lease to be made of any Benefice or ecclesiastical Promotion with Cure, or any part thereof, not being impropriated, shall endure any longer than while the Lessor shall be ordinarily resident and serving the Cure, without Absence above Fourscore Days in any one Year, but every such Lease so soon as it or any part thereof shall come to any Possession or Use above forbidden, or immediately upon such Absence, shall be void. And the Incumbent so offending shall lose one Years Profits of his Benefice, to be distributed by the Ordinary among the Poor of the Parish; and all Charges on such Benefices with Cure, with any Pension or Profit, to be yielded out of the same, other Profits than Rents reserv'd upon Leases made according to this Act, shall be void. *Stat. 13 Eliz. c. 20.*

Provided that every Parson who shall have two Benefices, may demise one of them, upon which he shall not let one of his be ordinarily resident to his Curate only, who shall there serve the Cure, but such Lease shall endure no longer than such Curate's Residence, without Absence above forty Days in any one Year. *Ib.*

It is provided, that these Words in 13 Eliz. c. 20. viz. 14 Eliz. c. 11. *So soon as it or any part thereof come to any Possession or Use above forbidden, or shall be repeal'd.* *Stat. 14 Eliz. c. 11.*

All Bonds, Contracts, Promises and Covenants, to be made for suffering or permitting any person to enjoy any Benefice or ecclesiastical Promotion with Cure, or to take the Profits thereof, shall be adjudg'd of such Force as Leases made by the same Persons, and not otherwise. *Ib.*

And all Leases, Bonds, Promises and Covenants, concerning Benefices and ecclesiastical Livings with Cure, to be made by any Curate, shall be of no other Force, Validity, or Continuance, than if the same had been made by

14 *Eliz. c. 11.* by the benefic'd person himself that demised the same to such Curate. *Ib.*

Spiritual Persons may let their Houses in Market Towns, so as it be not the Capital or Dwelling-house. And whereas an Act was made the 13 *Eliz. c. 10.* containing a Clause to avoid certain Leases, Grants, &c. made by Masters of Colleges, Guardians of Hospitals, Parsons, Vicars, &c. to prevent the Successors recovering of Dilapidations, it is hereby enacted, that the said Clause shall not extend to any Grant, Assurance, or Lease, of any Houses belonging to any such Persons, Bodies Politick or Corporate, or to any Grounds appertaining to such Houses, which are situate in any City, Borough, Town Corporate, or Market Town, or the Suburbs thereof, so that such House be not the Capital or Dwelling House of the Persons abovesaid, nor have above the Quantity of ten Acres of Ground thereto belonging. *Ib.*

Restrictions in such Leases. Provided that no Lease be made by Force of this Act in Reversion or without reserving the accustomed yearly Rent, or without charging the Lessee with Repairs, nor for a longer Term than forty Years. *Ib.*

18 *Eliz. c. 6.* Upon Leases made by any College in either of the Universities, or by the Colleges of *Eaton* or *Winchester*, a third part of the Rents part of the Rent shall be reserv'd in Corn, that is to say, of Colleges to in good Wheat, after six Shillings and eight Pence a be reserved in Quarter, or under, and Malt at five Shillings a Quarter, Corn and paid or under, to be deliver'd yearly upon Days prefix'd, at the in kind. said Colleges; and for default thereof, to pay to the said Colleges at the Election of the said Lessees, after the rate of the best Wheat and Malt in the Market of *Cambridge*, for the Rents that are to be paid to the Use of the Houses there; and after the rate of the best Wheat in the

Or after the Rate the best Wheat, &c. is sold for the next Market Day before the Rent is due. Market of *Oxford*, for the Rents that are to be paid to the Use of the Houses there; and in the Market of *Winchester* for the Rents to be paid there; and after the rate of the best Wheat in the Market at *Windsor*, for the use of *Eaton* on the next Market Day before the said Rents shall be due. *Stat. 18 Eliz. c. 6.*

Leaf other- And all Leases otherwise made, and collateral Bonds or void. Assurances to the contrary, shall be void, and such Grain or Money shall be expended for the Use and Relief of the Commons and Diet of the said Colleges, and not let or sold away, upon pain of Deprivation of the Heads of the said Colleges, and all others consenting thereto. *Ib.*

18 *Eliz. c. 11.* All Leases to be made by any ecclesiastical, spiritual or Leaf by a collegiate person, or others, of their Ecclesiastical or Spiritual Person, where a collegiate Lands, whereof any former Lease for Years is in former Lease Being, and not to expire or end within three Years next after the making such new Lease, shall be void. And all Bonds or Covenants for renewing or making any Leases

contrary

contrary to this Act, or 13 Eliz. c. 10. shall be void. Stat. 18 Eliz. c. 11. is in being void.

And whereas by the 13 Eliz. c. 20. it was enacted, that no Lease of any ecclesiastical Benefice or Promotion should endure any longer than while the Lessor or Incumbent should be resident, without Absence above Four score Days in any one Year, and that the Incumbent offending shou'd lose one Years Profits of his Benefice, it is hereby enacted, that after Complaint made to the Ordinary and Sentence given upon any such Offence committed by the Incumbent, the Ordinary within two Months after at the Request of the Church Wardens of the Parish, or one of them, shall sequester such Profits as he shall think fit, to any of the Inhabitants of the said Parish; and in default thereof, it shall be lawful to every Parishioner to detain his Tythes, and for the Church Wardens to enter and take the Profits of the Glebe and other Dues of such Benefice, for the use of the Poor, until such Sequestration shall be committed by the Ordinary, and then to yield an Account to the Sequestator, who shall employ the Profits to such Uses as the said Statute of 13 Eliz. c. 20. directs, on pain of forfeiting double the Value withholden to the Poor of the Parish, to be recover'd in the ecclesiastical Court. *ib.*

A Living may be sequestred, where the Incumbent is Non-resident.

All Judgments given to the Intent to have or enjoy any 43 Eliz. c. 9. Lease contrary to 18 Eliz. c. 20. and the 18 Eliz. c. 11. Judgments to shall be void, as Bonds and Covenants are declar'd to be support un-void which are made for that purpose. Stat. 43 Eliz. c. 9. lawful Leases,

All Leases, Estates, Interests, of Freehold or Terms of void. Years, or any uncertain Interest in Lands, Tenements, Stat. 29 Car. 2. or Hereditaments, not reduc'd to Writing and signed by c. 3. Leases the Parties or their Agents, legally constituted by some not reduced to Writing, shall have the Force and Effect of Leases or Writing, to be Estates at Will only, except Leases not exceeding three but Estates at Years from the making, whereupon the Rent reserv'd Will. shall be two Thirds of the Value. And no Leases, Estates, Except Leases or Interests, either of Freehold or Terms, or any uncer- for 3 Years. tain Interest not being Copyhold or Customary, shall be Leases not to assigned, granted, or surrendred, but by some Deed made be assign'd but by the Parties or their Agents constituted as aforesaid, or by Deed. by operation of Law. Stat. 29 Car. 2. c. 3.

Every Archbishop and Bishop is disabled to make, do 1 Jac. 1. c. 3 levy, or suffer any Act or Thing whereby any Honours, Bishops disa- Manors, Lands, &c. parcel of the Possession of his Bishop- bled to con- rick or belonging thereto, may be aliened, granted, de- vey the Lands mis'd, charg'd, or convey'd to the Crown; and all such of the Bishop's Alienations, Leases, Charges, and Conveyances, in Con- rick to the firmation Crown:



firmation of the same, are declar'd to be void. *Stat. 1 Jac. 1. c. 3.*

8 A. c. 17.

Lessor may  
distrain after  
the end of the  
Lease.

Within six  
Months.

Any person who hath Rent in Arrear upon any Lease for Life or Lives, for Years, or at Will, ended or determined, may distrain for such Arrears after the Determination of the respective Leases, as if such Leases had not been determin'd. *Stat. 8 A. c. 17.*

Provided that such Distress be made within six Kalendar Months after the Determination of such Lease, and during the Continuance of such Landlords Title or Interest, and during the Possession of the Tenant on whom such Arrears became due. *Ib.*

### READINGS.

Derivation of  
the Word  
Lease.

The Word *Leffa* and Lease according to Sir *Edward Coke*, is deriv'd of the *Saxon* Word *Leapum* or *Leassum*, for that the Lessee cometh in by lawful Means; and *dimittere*, in *French* *Layffer*, is to depart with or forego. *1 Inst. 43. B.*

The Words which make a Lease, are demise, betake, grant, and to farm, let, and whatever Word amounts to a Grant, may serve to make a Lease. *1 Inst. 45.*

What may be  
leased by the  
32 H. 8.

In Construction of the abovesaid Statute of 32 *H. 8. cap. 28.* which Sir *Edward Coke* calls the enabling Statute, he observes, First, that nothing can be demis'd by Authority of this Act but that whereout a Rent may be lawfully reserv'd. Secondly, that where not only a yearly Rent was formerly reserv'd, but Things not annual, as Heriots or any Fine or other Profit at or upon the Death of the Farmer; yet if the yearly Rent be reserv'd upon a Lease made by Force of this Statute, it sufficeth by the express Words of the Act. Thirdly, If he reserve more than the accustomed Rent, it is good also, by the express Letter of the Act; but if twenty Acres of Land have been accustomedly letten, and a Lease is made of those twenty, and of one Acre which was not accustomedly letten, reserving the accustomed yearly Rent, and so much more as exceeds the Value of the other Acre, this Lease is not warranted by the Act, for that the accustomed

nable Rent is not reserv'd, seeing part was not accustomably letten, and the Rent issueth out of the whole. Fourthly, If Tenant in Tail let part of the Land accustomably letten, and reserve a Rent *prorata*, or more, this is good, for that is in Substance the accustomable Rent. Fifthly, If two Coparceners be Tenants in Tail, of twenty Acres, every one of equal Value and accustomably letten, and they make Partition so as each have ten Acres, they may make Leases of their several Parts, each of them reserving the Half of the accustomable Rent. Sixthly, If the accustomable Rent had been payable at four Days or Feasts of the Year, yet if it be reserv'd yearly payable at one Feast, it is sufficient, for the Words of the Statute be reserv'd yearly. 1 *Inst.*

44.

Nor doth this Statute extend to any Lease to Lease without be made without Impeachment of Waste; there- Impeachment fore if a Lease be made for Life, the Remainder of Waste, not for Life, &c. this is not warranted by the Sta- warranted by tute, because it is dispunishable of Waste. But the Statute. if a Lease be made to one during three Lives, this is good for the Occupant, if any happen shall be punish'd for Waste. A Bishop that is seiz'd *jure* A Bishop, *Episcopatus*, a Dean of his sole Possessions *in jure* Dean, &c. may *Deacnatus*, an Arch-deacon *in jure* *Archi-diaconatus*, a Prebendary, and the like, are within the make Leases to bind their Statute, for every of them is seiz'd *in jure* *Ecclesiastica*. *Ib.* Successors.

But a Parson and Vicar are excepted out of the But a Parson Statute of 32 *H.* 8. and therefore if either of them cannot. make a Lease for three Lives, &c. of Lands accustomably letten, reserving the accustomed Rent, it must be also confirmed by the Patron and Ordinary, because it is excepted out of 32 *H.* 8. and not restrained by the Statute of *primo* or 13 *Eliz.* and what hath been said concerning a Lease for three Lives, doth hold for a Lease for one and twenty Years. *Ib.*

As to the disabling Statutes of the 1 *Eliz.* and 13 *Eliz.* Sir *Edward Coke* observes, that the Exception in the 1 *Eliz.* is in the Words following;

K 2

*viz.*

*viz. Other than for the term of twenty one Years or three Lives, from such time as any such Grant or Assurance shall be given, whereupon the old and accustomed yearly Rent or more shall be reserv'd. And*

The Statute  
of 1 *Eliz.* and  
13 *Eliz.* do  
not alter the  
32 *H. 8.*

Where a Bi-  
shops Lease  
must be con-  
firm'd by the  
Dean and  
Chapter.

Bishop may  
make a Lease  
to another  
where the  
Lease to a for-  
mer Tenant is  
not expir'd.

to that Effect is the Exception in the Statute of 13 *Eliz.* so that neither of these disabling Acts or any other, do in any sort alter or change the disabling Statute of 32 *H. 8.* but leaveth it for a Pattern in many Things for Leases to be made by. Secondly, No Lease made according to the Exception of 1 *Eliz.* or 13 *Eliz.* and not warranted by the Statute of 32 *H. 8.* (if it be made by a Bishop or any sole Corporation) but it must be confirmed by the Deans and Chapters, or others that have Interest, as hath been said in the Case of the Parson and Vicar. For example, if a Bishop make a Lease for one and twenty Years, and all those Years being spent, saving three or more, yet may the Bishop make a new Lease to another for twenty one Years, to begin from the making, according to the Exception of the Statute, but not a Lease for Life or Lives, as hath been said; and this concurrent Lease hath been resolv'd to be good, as well upon the Exception of 1 *Eliz.* in the Case of Bishops, as upon 13 *Eliz.* which extends to spiritual and ecclesiastical Corporations aggregate of many, as Deans and Chapters, &c. which the 32 *H. 8.* did not, but in the Case of the concurrent Lease in the Case of the Bishop it must be confirmed. Also, the Exception of 1 *Eliz.* and 13 *Eliz.* doth differ from the Statute of 32 *H. 8.* for the Leases for Years to be made according to the Exceptions of the Statute of 1 and 13 *Eliz.* must begin from the making, and not from the Day of the making, but by Force of 32 *H. 8.* from the Day of the making: And altho' the Statutes of the 1 or 13 *Eliz.* do appoint the Lease to be made by Writing, yet must it therein, and in the other eight Properties or Qualities required by 32 *H. 8.* follow the Pattern thereof (the concurrent Lease only except.) And altho' the Exception in the 1 and 13 *Eliz.* concerning the accustom'd Rent, is more general



general than that of 32 H. 8. and there is not any Provision for Leases made dispunishable of Waste, &c. yet must that Pattern of 32 H. 8. be followed; for Leases without Impeachment of Waste made by such spiritual and ecclesiastical Persons, are unreasonable and Causes of Dilapidations. 1 Inst. 45.

And altho' it be provided by the said Acts of Leases not 1 and 13 Eliz. that all Grants, &c. Leases, &c. warranted by made, &c. other than Leases for three Lives, or the Statute, one and twenty Years, according to those Acts, yet good against the Lessor, should be utterly void, and of none effect, to all Intents, Constructions, and Purposes, yet Grants or Leases, &c. not warranted by these Acts, are not void, but good against the Lessor, if it be a sole Corporation, or so long as the Dean or other Head of the Corporation remain, if it be a Corporation aggregate of many, for the Statute was made in Benefit of the Successor. *Ib.*

In every Lease for Years, regularly the Term Leases must must have a certain Beginning and a certain End, have a certain but altho' there appear no certainty of Years in Beginning and the Lease, yet if by a Reference to a certainty it Ending. may be made certain, it is sufficient *quia id certum est quod certum reddi potest*; for Instance, if *Ancell* seiz'd of Lands in Fee, grants to *Bell* that when *Bell* pays to *Ancell* twenty Shillings, from thenceforth he shall have and occupy the Land for twenty one Years, and after *Bell* pays the twenty Shillings, this is a good Lease for one and twenty Years from thenceforth. Again, if *Ancell* leaseth his Land to *Bell* for so many Years as *Bell* hath in the Manor of *Dale*, and *Bell* hath then a Term in the Manor of *Dale* for ten Years, this is a good Lease by *Ancell* to *Bell* of the Land of *Ancell* for ten Years. But if the Parson of *Dale* make a Lease of his Glebe for so many Years as he shall be Parson there, this cannot be made certain by any Means; but if he make a Lease for three Years, and so from three Years to three Years so long as he shall be Parson, this is a good Lease for six Years, if he continue Parson so long; first for three Years, and after that

for three Years more, and for the Residue uncertain. *Ib.*

If a Man makes a Lease to *John Sole* for so many Years as *James Naylour* shall name, this at the Beginning is uncertain; but when *James Naylour* hath named the Years, then it is a good Lease for so many Years. *Ib.*

And if a Man make a Lease for one and twenty Years if *John Sole* live so long, this is a good Lease for Years, altho' the Life of *John Sole* be uncertain. *Ib.*

A Lease for Life deem'd a greater Estate than a Lease of 1000 Years.

A Lease may cease and revive again.

In the Eye of the Law any Estate for Life being an Estate of Freehold, is a higher and greater Estate than a Lease for Years, tho' it be for a Thousand or more. 1 *Inst.* 46.

Altho' a Lease for Years must have a certain Beginning and a certain End, yet the continuance thereof may be uncertain, for the same may cease and revive again in divers Cases: As if Tenant in Tail makes a Lease for Years reserving twenty Shillings, and after take a Wife and die without Issue, now as to him in the Reversion the Lease is merely void; but if he endow the Wife of Tenant in Tail of the Land as she may be, though the Estate Tail be determined, now is the Lease as to the Tenant in Dower, who is in of the State of her Husband reviv'd again as against her, for as to her the Estate Tail continueth, for she shall be attendant for the third part of the Rent Services, and yet they were extinct by Act in Law. So it is if Tenant in Tail make a Lease for Years *ut supra*, and dieth without Issue, his Wife enseient with a Son, he in the Reversion enter against him, the Lease is void; but after the Son be born the Lease is good, if it be made according to the Statute, and otherwise it is voidable. 1 *Inst.* 46.

If Tenant in Fee take a Wife and make a Lease for Years and dieth, and the Wife is endowed, she shall avoid the Lease, but after her Decease the Lease shall be in Force again. *Ibid.*



When

When the Lessee entreth by Force of the Lease, then is he Tenant for term of Years; and if the Lessor in such Case reserve to him a yearly Rent upon such Lease, he may chuse whether he will distrain for the Rent in the Tenements letten, or else he may have an Action of Debt for the Arrearages, against the Lessee: But in such Case, it behoveth, that the Lessor be seisd in the same Tenements at the time of this Lease; for it is a good Plea for the Lessee to say that the Lessor had nothing in the Tenements at the time of the Lease, except the Lease be made by Deed indented, in which Case, such Plea, lyeth not for the Lessee to plead. *Lit. Sect. 58.*

Upon these Words of *Littleton*, Sir *Edward Coke* observes, that altho' to many Purposes, the Lessee is not Tenant for Years until he enter, in somuch that a Release made to him is not good to encrease his Estate before Entry, yet the Lessor may release the Rent reserv'd before Entry, in respect of Privity, and the Lessee before Entry, hath an Interest grantable to another: And altho' the Lessor dye before the Lessee enters, yet the Lessee may enter into the Lands; so if the Lessee himself dye before Entry, yet his Executors or Administrators may enter.

If a Man hath a Term for Years in the right of his Wife, whereof he may dispose at any time during his Life, and if he survives his Wife, the Law gives the Lease to him, yet if he make no disposition thereof, and the Wife survive him, it remaineth with the Wife.

If a Man be possess'd of a Term of 40 Years in the right of his Wife, and maketh a Lease for twenty Years, reserving Rent, and dye, the Wife shall have the residue of the Term, but the Executors of the Husband shall have the Rent.

If a Lease be made to a Man and his Wife for Term of their Lives, the Remainder to the Executors of the Survivor of them, and the Husband grant away his Term and dies, this shall not bar the Wife, for that she had but a Possibility.



A Lease to a Bishop and his Successors goes to his Executors. So if a Lease be made to a Man and his Heirs.

When a Lease shall be said to commence.

If a Lease for Years be made to a Bishop and his Successors, yet his Executors and Administrators shall have it in *Auter droit*, for regularly no Chattel can go in Succession, in a Case of a sole Corporation, no more than if a Lease be made to a Man and his Heirs, it can go to his Heirs.

If a Lease be made by Indenture, bearing date the twenty-sixth of *May, &c.* to have and to hold for twenty one Years from the Date, or from the Day of the Date, it shall begin on the 27th Day of *May*. If the Lease bear Date the 26th Day of *May, &c.* to have and to hold from the making hereof, or from henceforth, it shall begin on the Day in which it is declar'd; for the Words of the Indenture are not of any effect till the delivery, and thereby from the making, or from henceforth, take the first effect. But if it be a *Die confectiois*, then it shall begin the next Day after the delivery. If the *Habendum* be for the Term of twenty one Years, without mentioning when it shall begin, it shall begin from the delivery, for there the Words take effect, as is aforesaid.

If an Indenture of Lease bare Date, which is void or impossible; as the 30th Day of *February*, or the 30th Day of *March*, if in this Case, the Term be limited, to begin from the Date, it shall begin from the delivery, as if there had been no Date at all. And so it is, if a Man by his Indenture of Lease, either recite a Lease which is not, or is void, or mis-recite a Lease in a point material, which is in *Esse* to have and to hold, from the ending of the former Lease; this Lease shall begin in course of time from the delivery thereof. 1 *Inst.* 46. b.

Rent can't be reserv'd out of son, out of any incorporeal Inheritance, as Ad-vowsons, Commons, Offices, Corrody, Mulcture of a Mill, Tythes, Fairs, Markets, Liberties, Privileges, Franchises, and the like; but if a Lease be made of them by Deed for Years, it may be good by way of Contract, to have an Action of Debt, but distrain the Lessor cannot.

But

But if a Man deviseth the Vesture or Herbage of his Land, he may reserve a Rent, for that the thing is mainorable; and the Lessor may distrain the Cattle upon the Land.

The Lessor cannot reserve to any other but to Lessor must himself; and if two Jointenants make a Lease reserve the for Years, by Paroll or Deed-poll, reserving a Rent to him- Rent to one of them, this shall enure to them self. both, but if it be so reserv'd by Deed indented Joint-tenants. it shall enure to him alone, by way of Conclusion.

If the Rent be reserv'd to the Lessor only, and Rent reserv'd not to him and his Heirs, the Rent will deter- generally goes mine by his Death, if he dye within the Term, to the Heir. but if he reserve a Rent generally, without shewing to whom it shall go, it shall go to his Heirs. If he reserve a Rent to him and his As- Rent reserv'd signs, yet the Rent shall determine by his Death, to one and his because the Reservation is good but during his Assigns, deter- Life. So it is if he reserve a Rent to him and min'd by Les- his Executors, it shall end by his Death, because sor's Death. the Heir hath the Reversion, and the Rent was incident to the Reversion. 1 *Inst.* 47.

Upon a Lease for Years, reserving a yearly Lessor may Rent, the Lessor may have several Actions of have several Debt for every Years Rent; but upon a Bond Actions of or Contract for payment of several Sums, no Debt. Action of Debt lieth till the last Day be past, Not so on without a special Agreement to the contrary. Bond or Con- tract.

If the Lessor hath nothing in the Land, nor the Lessee *quid pro quo*, or any thing for which he should pay Rent, he may plead that the Les- Lessee may plead *non dimi-* for *non dimisit*, and give in Evidence the other sit, if Lessor have no Title, matter; but if a Lease be made by Deed in- unless the dented, then are both Parties concluded. Lease be by

*Andrew's* Lessee for the Life of *Bell* makes a Indenture. Lease for Years, by Deed indented, and after pur- Where the chases the Reversion in Fee, *Bell* dieth; *Andrews* Lessor may shall avoid his own Lease, for he may confess avoid his own and avoid the Leases which took effect in point Lease, by pur- of Interest, and determined by the Death of chase of the *Bell*; but if *Andrews* had nothing in the Land, Reversion. and made a Lease for Years, by Deed indented, and

Where one is  
concluded by  
taking a Lease  
of his own  
Land.

and after purchase the Land, the Lessor is as well concluded, as the Lessee to say that the Lessor had nothing in the Land; and here it worketh only upon the Conclusion, and the Lessor cannot confess and avoid, as he might in the other Case. If a Man take a Lease of his own Land, by Deed indented, reserving a Rent, the Lessee is concluded: But if a Man take a Lease of the Herbage of his own Land, by Deed indented, this is no Conclusion to say that the Lessor had nothing in the Land, because it was not made of the Land itself: But if a Man take a Lease for Years of his own Land by Deed indented, the Estoppel doth not continue after the Term ended; for by the making of the Lease, the Estoppel doth grow, and consequently, by the end of the Lease, the Estoppel determines, and that part of the Indenture which belonged to the Lessee, doth after the Term ended, belong to the Lessor, which should not be if the Estoppel continued. 1 *Inst.* 47. b.

If the Lessor enters for a Condition, now is the Estate determined, but the Lessor shall have Debt for his Rent, due before the Condition broken. 3 *Lev.* 23. b.

Privity.

Lessee for Years assigns over his Term, and afterwards the Lessor by Bargain and Sale inroll'd, sells the Reversion; the Bargainer shall not have an Action of Debt against the Lessee, because there is no Privity between them. 3 *Rep.* 23. b. 24. a.

But he may bring an Action of Covenant, or distrain for his Rent. *Cro. Jac.* 521, 522. pl. 7. 1 *Saund.* 240. See 3 *Mod.* 336, 337, 338.

Lessor may  
charge the  
Lessee or Af-  
signee, at his  
Election.  
Before accep-  
tance of Rent  
of the Assignee.

Lessee for Years assigns over his Term, the Lessor may charge the Lessee or his Assignee, at his Election, and therefore if the Lessor accepts the Rent of the Assignee, he hath determined his Election, and he shall not have an Action of Debt afterwards against the Lessee for Years for the Rent due after the Assignment, by reason of his own Acceptance, by which he hath extinguish'd the privity of the Contract, but



but yet the Lessor after his own Acceptance, shall maintain an Action of Covenant for his Rent. 1 *Saund.* 240, 241. *Cro. Jac.* 521. *pl.* 7. 334. *pl.* 1. *Cro. Car.* 580. *pl.* 3. And also his Acceptance of the Rent shall be a sufficient Notice of the Assignment. *Cro. Jac.* 334. *pl.* 1. 398. *pl.* 4.

If a Lease be made for Years to *A*, and after Concurrent the Lessor doth make a Lease for Years to *B* regularly this Lease to *B* is a good Lease, for so many Years of the second Lease as shall come after the first Lease is determined. *Noys. Max.* 67. 6 *Rep.* 36.

A Lease for Term of Years, tho' never so long, Lease cannot is but a Chattel; and though it be a very long be entail'd. Lease, it cannot be entail'd.

But the devise of a Lease for Years to one for Life, and afterwards to another during the residue of the Term, is good, because he hath it not by way of Remainder, but by executory devise. *8 Rep.* 95, 96. 10 *Rep.* 47. But devise of a Lease to one Remainder to another good.

Every one that is possess'd of Lands and Tenements for Years, may make a Lease of all the Years except one Day, or any other part of it; but it must be granted for a lesser time than he hath that makes the Lease, for if all the Estate is granted, it is an Assignment of the Lease. If all the Term be granted over, it is an Assignment.

And if a Lessee for Years maketh a Lease for Life, the Lessee for Life may enjoy it for the Lessor's Life, provided the Term of Years lasts so long; but if he gives Livery and Seisin upon it, this is a Forfeiture of Estate for Years. Lessee for Years may make a Lease for Life.

Joyntenants, Tenants in common, and Coparceners, may make Leases for Life, or Years of their own parts, and those Leases will bind their Companions. Joint tenants,

Bishops, Deans, Archdeacons, Prebendaries may make Grants of antient Offices of Necessity with antient Fees; as of the Office of Chancellor, Official Steward, Register, Bailiff, &c. For these Grants are not within the Statute of the 32 *H. 8.* nor restrain'd by the 1 *Eliz.* or 13 *Eliz.* because they are no Diminution of their Revenue; yet to bind their Successors, these Grants must Bishops may make Grants of antient Offices.

must be confirm'd by the Dean and Chapter, as before the Statute, because they are Grants at common Law. *Inst.* 44. a. 10. *Rep.* 60, 61. 3 *Cro.* 50, 259.

Condition of Re-entry dispens'd with by acceptance of Rent.

When a Lease for Years is made rendring a Rent, and there is a Proviso, that if the Rent be in Arrear, it shall be lawful to enter; here if the Lessor demands the Rents, and it is not paid, if he afterwards accepts the Rent (before his Re-entry) for Rent due at a Day, afterwards he hath dispensed with the Condition; but if the Rent was afterwards paid for that Quarter for which the Demand was made, yet he may re-enter, for as well before as after his Re-entry, he might have his Action of Debt for that Rent. 3 *Rep.* 64. b.

Or by a Distress for Rent, due after a Demand made.

So also if the Lessor distrains for Rent after the Demand, he hath affirm'd the Lease to be in being; for a Man could not distrain for Rent after the Term ended, till the late Statute, 3 *Rep.* 64. b.

Lease cannot be avoided without an actual Demand, tho' there be a

But where there is a Clause that the Lease should be void if the Rent be behind, it shall not be void without an actual Demand. *Henson and Nancliff Hill*, 18 *Jac.* *Hobart*, 331.

Clause to that effect.

Where the Lessor seals the Lease, and the Lessee doth not, yet the Lessee may have his Action for Covenant broken. *Owen's Rep.* 100. *Cro. Eliz.* 122. See 1 *Leon. Case* 458.

Lessee may have an Action of Covenant, tho' he does not seal the Lease, or a counter-part.

Where an Indenture of Lease is sealed by the Lessee, and not by the Lessor, *nil operatur*, neither in respect of the Estate, nor of the Covenants. *Yelv.* 18, 19.

Otherwise if the Lessee only seals.

If a House be uncover'd when the Tenant comes in, it is no Waste in him to suffer it to fall down, but if he pulls it down, it is Waste.

Waste by Tenant.

If the Tenant builds a new House, it is Waste, and if he suffer it to be wasted, it is a new Waste.

In Buildings.

If the House fall down by Tempest, or be burnt by Lightning, or prostrated by Enemies or the like, without a Default of the Tenant, or was ruinous at his coming in, and fall down, the Tenant may build the same again with such Materials,

rials as remains, and with other Timber, which he may take, growing on the Ground, for his Habitation, but he must not make the House larger than it was. If the House be uncover'd by Tempest, the Tenant must in convenient time repair it. 1 *Inst.* 53.

If Glass Windows (tho' glased by the Tenant himself) be broken down, or carried away, it is Waste, for the Glass is part of his House; and so it is of Wainscotte, Benches, Doors, Windows, Furnaces and the like, annex'd or fix'd to the House. *Ibid.* Windows,  
Wainscot, &c.

Tho' there be no Timber growing upon the Ground, yet the Tenant at his Peril, must keep the Houses from wasting. *Ibid.*

A Wall uncovered when the Tenant cometh in, is no Waste, if it be suffer'd to decay. If the Tenant cut down or destroy any Fruit-trees growing in the Gardens or Orchard, it is Waste; but if such Trees grow upon any of the Ground which the Tenant holdeth, out of the Garden or Orchard, it is no Waste. *Ibid.* Fruit-trees.

If the Tenant of a Dove-house, Warren, Park, Vivary, Fish Pond or the like, do take so many as such sufficient Stores be not left as he found when he came in, this is Waste, and to suffer the Park to decay, whereby the Deer are dispers'd, is Waste, *Ibid.* Dovehouse,  
Fish-ponds,  
&c.

Oak, Ash and Elm, are Timber-trees in all Places, and the cutting them down, or the topping them, or doing any Act whereby the Timber may decay, is Waste; and in Countries where Timber is scarce, and Beech and other Wood is us'd in Building, there it is accounted Timber. Timber.

If the Tenant suffer the young Germens to be destroy'd, it is Waste; and where the Tenant cuts down the Under-wood, as he may by Law, yet if he suffer the young Germens to be destroy'd, or stubb up the same, it is Waste. Suffering  
young Woods  
to be spoil'd

Also if he cut down Willows, Beech, Birch, Trees which Asp, Maple, or the like, standing in the defence or safe-guard of the House, or if he stubb up a House. defend the  
Quick-



Quick-set Fence, or suffer it to be destroy'd, this is Waste, but the cutting of dead-Trees is no Waste.

Digging Gravel, Mines, &c. not open Waste.

If the Tenant suffer the Houses to be wasted, and then fell down Timber to repair the same, this is a double Waste. Digging for Gravel, Lime, Clay, Brick, Earth, Stone, or the like, or for Mines of Metal, Coal, or the like, hidden in the Earth, and were not open when the Tenant came in, is Waste; but the Tenant may dig for Gravel or Clay for the Reparation of the House, as well as he may take convenient Timber-trees. 1 *Inst.* 53.

Sea Banks.

It is Waste to suffer a Wall of the Sea to decay, whereby the Meadow or Marsh-ground is surrounded, and become unprofitable; but if it be overflow'd suddenly by the Violence of the Sea, occasion'd by Tempest, without any Default in the Tenant, this is not punishable as Waste; the same Law is as to the repair of Banks or Walls, against Rivers, or other Waters, where the Meadows receive Damage and become unprofitable. *Ibid.*

Turning Meadows into Arable, Waste.

If the Tenant convert Arable Land into Wood, or *e converso* Meadow into Arable, it is Waste, for it changeth not only the Course of his Husbandry, but the proof of his Evidence. *Ibid.*

Wood for Fences.

The Tenant may take sufficient Wood to repair the Walls, Pales, Fences, Hedges and Ditches, as he found them, but he can make no new; and may he take all sufficient Plowbote, Firebote, and other Housebote. *Ibid.*

He cannot fell Trees, and with the Money cover the House; and burning the House by Negligence or Mischance, is Waste.

Waste don't lie against Executors.

If Lessee for Years doth Waste and dieth, an Action of Waste doth not lie against the Executor or Administrator, for Waste done before their Time.

Repairs.

In many Cases, a Tenant for Life or Years, may fell down Timber to make Reparations, albeit he be not compellable thereunto, and shall not be punish'd for the same, in any Action of Waste:

Waste: As if a House be ruinous at the time of the Lease made, if the Lessee suffer the House to fall down, he is not punishable, for he is not bound by Law to repair the House in that Case; and yet, if he cut down Timber upon the Ground so letten, and repair it, he may well justify it; and the reason is, for that the Law doth favour the supportation and Maintenance of Houses of Habitation: And therefore if two or more Joint-tenants or Tenants in common, be of a House of Habitation, and the one will not repair the House, the other shall have by the Law, a Writ *de reparatione faciendi*, and the Writ saith, *ad sustentationem ejusdem domus teneantur*. So it is if the Lessor by his Covenant, undertake to repair the Houses, yet the Lessee (if the Lessor doth it not) may with the Timber growing upon the Ground repair it, tho' he be not compellable thereunto. In the same manner if a Man make a Lease of a House and Land, without impeachment of Waste for the House, yet may the Lessee with the Timber upon the Ground, repair the House, though he may utterly waste if he will: And so in many other Cases, if there be open Mines, and the Owner make a Lease of the Land, with the Mines therein, this shall extend to the open Mines only, and not to any hidden Mine; but if there be no open Mine, and the Lease is made of the Land, together with all Mines therein, there the Lessee may dig for Mines, and enjoy the Benefit thereof, otherwise those Words should be void. 1 *Inst.*

54.

A Lease for Years altho' it be a very long Lease, cannot be entail'd (but may be assign'd in trust to several Uses, which may be an Entail in effect) for the nature of a Chattel cannot be turned into an Inheritance. *Hill 23 Car. B. R.* which would be, if such a Lease which is but a Chattel might be entail'd: for an Estate Tail is an Estate of Inheritance, yet in Chancery they do often make good such Entails, made by Will. *Styles Prac. Regis.* 400.

The

The trust of a long Lease was limited thus: To the Father for sixty Years if he live so long; afterwards to the Mother for sixty Years, if she liv'd so long; afterwards to *John* and his Executors, if he surviv'd his Father and Mother; and if he died in their Life time without Issue, then to his Issue; but if he died having Issue living the Father and Mother, the Remainder to *Edward* in Tail. *John* died without Issue in the Life of the Father and Mother; and it was resolv'd that *Edward* should take this Remainder, for the whole term had vested in *John* if he had surviv'd; yet the Contingency never happening, and so wearing out in the compass of two Lives in being, the Remainder over to *Edward* might be limited upon it. *Int. Wood and Saunders*, before the Lord Keeper *Bridgman*, assisted with the Judges.

If a Lease for Years comes to be limited in Tail, the Law allows not a present Remainder to be limited thereupon; yet it will allow a future Estate arising upon a Contingency only, and that to wear out in a short time. By the Lord Chancellor *Finch* in the Duke of *Norfolk's* Case, fol. 27.

Where a Lessee shall not build a House that is burnt.

A Lessee for Years is not bound to repair the House let to him which is burnt by accident, if there be not a special Covenant in the Lease that he shall leave the House in good repair at the end of the Term; but if the House be burn'd by the negligence of the Lessee, or his Servants, Wife, or Children, he shall repair it although there be no such Covenant in the Lease to do it, *Pasch. 24 Car. B. R.* for by the Lessees Covenant, it shall be intended that he took notice of what accidents might happen; and his Covenant shall be taken generally and without exception, and strongest against himself; for negligence which is prejudicial to another, is punishable in Law. *Style's Pract. Regif. 402.*

Lease of Stock.

Leases for Years may be made of any Goods and Chattels Personal; as a Stock of Cattle, a Sum of Money, &c.



If a Man make a Lease, excepting a Close and Way. Wood, the Law giveth him a Way to come to them.

If a Tenant for Years do take a new Lease for Surrender. more Years, this is a surrender in Law of the old Lease. *Watt and Maidwell's Case, Hill. 3 Car. R. 1302. B. R. Perkins 117. Hutton Rep. 104.*

A Lessee for Years cannot surrender before his term begin; neither can he surrender part of his Lease, but he may grant part of it. *Noys Max.*

74.

If Tenant for Years, who knoweth the end of Corn sown his Term, doth sow the Land, and his term end- by Lessee for eth before the Corn is ripe, in this Case the Les- Years. for, or he in the Reversion, shall have the Corn, because the Lessee knew the certainty of his term, and when it would end. *Lit. §. 68.*

Tenant at Will having no certain Estate, the By Lessee at Lessor may put him out at what time he pleases; Will. yet if the Lessee soweth the Land, and the Lessor after it is sown, and before the Corn is ripe, put him out, the Lessee shall have the Corn, and shall have free Entry, egress and regress, to cut and carry away the Corn, because he knew not at what time the Lessor would enter upon him: But though the Lessee shall have his Corn, yet he shall loose his Fallow and Dung carried out. *Ib. Fallow, &c.*

Every Lease at Will, must in Law be at the Will of both Parties; and therefore when the Lease is made, to have and to hold at the Will of the Lessor, the Law implieth it to be at the Will of the Lessee also. And so it is when the Lease is made to have and to hold at the Will of the Lessee, this must be also at the Will of the Lessor. *1 Inst. 55.*

And as the Lessee shall reap the Crop which he Roots, Hemp, sow'd in peace, although the Lessor determine his &c. Will before it is ripe; so if the Lessee set Roots, or sow Hemp or Flax, which produce an annual Profit, if after the same be planted the Lessor oust the Lessee, or if the Lessee dieth; yet he, or his Executors shall have that Years Crop; but if he plant young Fruit Trees, or young Oaks, Fruit Trees. Ashes,

- Corn sown.** Ashes, Elms, &c. or sow the Ground with Acorns, &c. there the Lessor may put him out notwithstanding, because they will yield no present annual Profit: And this is not only proper to a Lessee at Will, that when the Lessor determin'd his Will, the Lessee should have the Corn sown, &c. but to every particular Tenant that hath an Estate uncertain. And therefore if Tenant for Life soweth the Ground, and dieth, his Executors shall have the Corn, for that his Estate was uncertain, and determin'd by the act of God; and the same Law is of the Lessee for Years of Tenant for Life. So if a Man be seiz'd of Land in the Right of his Wife, and soweth the Ground, and he dieth, his Executors shall have the Corn; and if his Wife die before him, he shall have the Corn; but if the Husband and Wife be Jointenants of the Land, and the Husband soweth the Ground, and the Land surviveth to the Wife, it is said that she shall have the Corn. *Ib.*
- Jointenants.** If Tenant *pur term de autre Vie* soweth the Ground, and *cestuy que Vie* dieth, the Lessee shall have the Corn. If a Man seiz'd of Lands in Fee hath Issue a Daughter and dieth, his Wife being *ensient* with a Son, the Daughter soweth the Ground, the Son is born, yet the Daughter shall have the Corn, because her Estate was lawful and defeated by the Act of God, and it is good for the Commonwealth that the Ground be sown. *Ib.*
- Lessee for Life of another.** But if the Lessee at Will sow the Ground with Corn, &c. and after he himself determine his Will, and refuseth to occupy the Ground, in that Case the Lessor shall have the Corn, because he looseth his Rent. And if a Woman that holdeth Land *durante Viduitate sua*, soweth the Ground and taketh Husband, the Lessor shall have the Emblements, because that the determination of her own Estate grew by her own Act: But where the Estate of the Lessee, being uncertain, is defeasible by a Right Paramount, or if the Lease determine by the Act of the Lessee,

as by Forfeiture, Condition, &c. there he that hath the Right Paramount, or that entreth for any Forfeiture, &c. shall have the Corn. 1 *Inst.*

55.

The Lessor may by actual entry into the Ground determine his Will in the absence of the Lessor, but by Words spoken from the Ground the Will is not determin'd, until the Lessee hath notice; no more than the discharge of a Factor, Attorney, or such like, in their Absence, is sufficient in Law, until they have notice thereof. *Ibid.*

Entry deter-  
mines the  
Will.

If the Lessee at Will, by good Husbandry and Industry, either by overflowing, or trenching, or compassing of the Meadows, or digging up of Bushes, or such like, make the Grass grow in more abundance; yet if the Lessor put him out, the Lessee shall not have the Grass, because the Grass is the natural profit of the Earth: And the same Law is if he doth sow Hay Seed, and thereby encrease the Grass. 1 *Inst.* 56.

Lessee at Will  
shall not have  
the sown  
Grass, &c.

If a House be leased to hold at Will, the Lessee is not bound to sustain or repair the House, as Tenant for term of Years is tied: But if Tenant at Will commit voluntary Waste, as in pulling down of Houses, or in felling of Trees, it is said that the Lessor shall have an Action of Trespass for this against the Lessee.

Lessee at Will  
not bound to  
repair.

May not com-  
mit voluntary  
Waste.

If Tenant at Will commits voluntary Waste, it amounts to a determination of his Will, or an intimation that he will hold the Estate no longer: Will.

For it deter-  
mines the  
Will.

*Lit.* §. 71.

By the Custom of London, a Tenant at Will, under the yearly Rent of 40 s. shall have a Quarters Warning; and paying above 40 s. shall have half a Years Warning.

Tenant at  
Will in Lon-  
don.

If Tenant at Will granteth over his Estate to another, and the Grantee entreth, he is a Disseisor, and the Lessor may have an Action of Trespass against the Grantee; for albeit the Grant was void, yet it amounteth to a determination of his Will: 1 *Inst.* 57.

Granting over  
his Estate  
determines it:



Tenant at  
Sufferance.

A Tenant at Sufferance, is he that first came in by lawful Demise, and after his Estate is ended continueth the Possession, and wrongfully holdeth over as Tenant for the term of another's Life; who continueth in Possession after the Decease of *cestuy que Vie*, or Tenant for Years, who holdeth over his Term; and against such Tenant at Sufferance, the Lessor cannot have an Action of Trespass before Entry. 1 *Inst.* 57. b.

Against the King there is no Tenant at Sufferance; but he that holdeth over in the Cases abovesaid, is an Intruder upon the King, because there is no Latches imputed to the King for not entring. *Ibid.*

If a Man make a Lease at Will and dieth, the Will is determin'd; and if the Lessee continueth in possession, he is Tenant at sufferance. *Ibid.*

A Release to a Tenant at Will is good, because between them there is a possession with a privity; but a Release to a Tenant at Sufferance is void, because he hath a possession without privity: As if Lessee for Years held over his term, &c. a Release to him is void, for that there is no privity between them. 1 *Inst.* 270. b.

Rent suspend-  
ed by the  
Lessor entring  
on part of the  
Premises.

Reviv'd by  
re-entry.

In *Ejectione firma*: It was agreed by the Justices, that to make a suspension of a Rent serv'd upon a Lease for Years, the Lessor must oust the Lessee of part of the Thing let, and hold him out 'till after the Day that the Rent is made payable by the Lease; and if the Lessee re-entreteth the Rent is reviv'd. *Timbrel and Bullock's Case. Styles* 448.

---

### Libels.

*West.* 1. 3 *Ed.* 1. c. 34. **N**One shall report any false or scandalous News or Tales, whereby Discord may arise betwixt the King and his People, or between the great Men of the Realm,

Realm, on pain of Imprisonment till he produce the slanderous Re-  
 Author. *Stat. West. 1. 3 Ed. 1. c. 34.* ports on pain

None shall devise or tell any false News, Lies, &c. of of Imprison-  
 Prelates or Lords, or of the Chancellor, Treasurer, Pri-ment.  
 vy Seal, Steward of the King's House, or Judges, where- 2 *Ri. 2. c. 5.*  
 by any Discord or Slander may arise, or Mischief come False News,  
 to the Realm, as is ordain'd by *West. 1 Stat. 2 Ri. 2. c. 5. &c.*

When one hath told false News, Lies, &c. contrary to 12 *Ri. 2. c. 11.*  
 the 2 *Ri. 2. c. 5.* and cannot produce the Author, and is Reporter of  
 thereupon imprisoned, he shall afterwards be punish'd by false News  
 the King's Council, notwithstanding the Act of *West. 1* punishable.  
*Stat. 12 Ri. 2. c. 11.*

## READINGS.

A Libel is a malicious Defamation or Aspersion Libel defined  
 of one who is alive, or of the Memory of one  
 that is dead, either by Printing or writing; and  
 may be made as well against a private Man as a- May be against  
 gainst a Magistrate. a private Man

Upon the Statute of *West. 1. c. 34.* Sir *Edward* as well as a  
*Coke* observes, there are five sorts of false Ru- Magistrate.  
 mours within the Purview of that Act.

1. Rumours concerning the King, whereby  
 Discord or Scandal may arise between the King  
 and his Commons, signified here by People.

2. Against the Commons, whereby Discord or  
 Scandal may be moved between them and the  
 King.

3. Against the King, whereby Discord or Scan-  
 dal may grow between the King and the Peers,  
 or Lords and Nobles of the Realm, signified here  
 by *Les haut homes de Son Realme.*

4. Against the Peers or Lords and Nobles of  
 the Realm, whereby Discord or Slander may hap-  
 pen between them and the King.

5. Lastly, whereby Discord or Scandal may a-  
 rise between the King, his Lords, and Commons.  
 2 *Inst. 227.*

And that although this Act of *West. 1.* and the Proceedings at  
 2 *Ri. 2.* be generally in the Negative, yet do law not with-  
 they not extend to all manner of false News, or in the Statute  
 horrible and false Scandals and Lies, &c. for against Scan-  
 they dal,

they extend only to extrajudicial Slanders, &c. And therefore if any Man bring an Appeal of Murder, Robbery, or other Felony, against any of the Peers or Nobles of the Realm, &c. and charge them with Murder, Robbery or Felony, albeit the Charge be false, yet shall they have no Action, *de Scandalis Magnat.* neither at the common Law, nor upon either of these Statutes for the bringing of his Action, nor for affirming the same to his Council, Attorney or Curfitor for the framing of his Writ, or for speaking the same in Evidence to a Jury; or for using of those Words for the necessary Commencement or Prosecution of his Action Judicially. 2 *Inst.* 228.

Slander by  
way of Irony  
sent in a pri-  
vate Letter  
punish'd.

One sent a Letter seal'd up, to Sir *Baptist Hicks*, which was so delivered to his Hands, containing many spiteful Scandals, deliver'd Ironice: As saying, you will not play the *Jew*, nor the *Hipocrite*, and in that sort taunting him for an Alms-house, and certain good Works that he had done, all which he charg'd him to do for Vain glory: whereupon Sir *Baptist Hicks* sued him in the Starchamber, and now upon the hearing, it was resolv'd, that tho' it were not proved, that the Defendant had not any way publish'd it, yet the Court would hold Plea of it, and so did, and fin'd the Defendant, and sentenc'd him to wear Papers, and to make his Submission to Sir *Baptist Hicks* in *Cheapside*; yet an

But an Action  
on the Case  
will not lie in  
that Case.

Action of the Case will not lie in that Case, for want of Publication, but the King and common Wealth are interested in it, because it is a Provocation to a Challenge, and breach of the Peace. *Hicks Case*, P. 16. *Jac. Hob.* 215.

Whether it be  
criminal to  
have a Libel  
in the House.  
Seecaftwards.

An Information was exhibited against *A. B.* for causing to be framed, printed and published, a scandalous Libel, entitled, &c. thereby scandalizing of one *C. D.* Upon not guilty pleaded, it appear'd upon the Evidence, that after the discovery of the Libel, there were Warrants from the Lord *Arlington*, principal Secretary of State, to search the Lodgings of the Defendant, who



who was suspected to be the Contriver of it, where were found two of these Libels printed.

The Opinion of the Court was, that this was no Crime within the Information, tho' he gave no Account how they came there, and the having of a Libel, and not delivering of it to a Magistrate, was only punishable in the Star-chamber, unless the Party maliciously published it anonymus. *1 Vent. 31.*

Where a Writing, pretending to recommend the Characters of several great Men, instead of mentioning what they were generally esteemed for, pitched upon such Qualifications only, as their Enimies charg'd them with the want of: For Example, one was applauded for his Courage, who was known to be a great Statesman but no Soldier; another to be imitated for his Learning, who was known to be a great General but no Scholar, &c. This kind of writing was held as criminal as downright Scandal. *1 Hawk. 194.*

And from the same Foundation it hath also been resolv'd, that a defamatory Writing, expressing only one or two Letters of a Name, in such a manner, that from what goes before and follows after, it must needs be understood to signify such a particular Person, in the plain, obvious and natural Construction of the whole, and would be perfect Nonsense if strained to any other meaning, is as properly a Libel, as if it had express'd the whole Name at large. *1 Hawk. 194.*

But it hath been resolv'd, that no false or scandalous Matter contain'd in a Petition to a Committee of Parliament, or in Articles of the Peace, exhibited to Justices of Peace, or in any other Proceeding in a regular Course of Justice, will make the Complaint amount to a Libel. *Ibid.*

No Writing whatsoever is to be esteem'd a Libel, unless it reflect upon some particular Person; and a Writing full of obscene Ribaldry, without any kind of Reflection upon any one, is not punishable at all, by any Prosecution at common Law, as was agreed in the Court of King's

Bench; yet the Author may be bound to his good Behaviour, as a scandalous Person of evil Fame.

Publishing or  
dispensing a  
Libel, tho'  
ignorant of  
the Contents,  
criminal.

First reading  
or hearing a  
Libel read, is  
not criminal,  
but repeating  
any part of  
it is.

Copying a Li-  
bel criminal,  
or writing af-  
ter one who  
dictates it.

Petition deli-  
ver'd to those  
it don't con-  
cern, may be  
a Libel.

Reading a Li-  
bel not know-  
ing the Con-  
tents, no Pub-  
lication.

Not only he who Composes, or procures another to compose a Libel, but also that he who publishes, or causes another to publish it, are in danger of being punish'd for it: And it is said not to be material, whether he who disperses a Libel, knew any thing of the Contents or Effect of it or not; for nothing could be more easy, than to publish the most virulent Papers, with the greatest Security, if the concealing the Purport of them from an illiterate Publisher would make him safe in the dispersing them. Also it hath been said, that if he who hath read a Libel himself, or hath heard it read by another, do afterwards maliciously read or report any part of it, in the Presence of others, or lend or shew it to another, he is guilty of an unlawful Publication of it. Also it is held, that copying of a Libel shall be a conclusive Evidence of the Publication of it, unless the Party can prove that he deliver'd it to a Magistrate to examine it; in which Case, the Act subsequent is said to explain the Intention precedent. But it seems to be the better Opinion, that he who first writes a Libel dictated by another, is thereby guilty of making it, and consequently punishable for the bare writing; for it was no Libel till it was reduced to writing. *1 Hawk. 195.*

He who delivers a Paper full of Reflections on any Person, in nature of a Petition to a Committee of Parliament, to any other Persons except the Members of Parliament, may be punished as the Publisher of a Libel, in respect of such a dispersing thereof, among those who have nothing to do with it. *1 Hawk. 196.*

He who barely reads a Libel in the Presence of another, without knowing it before to be a Libel, or who hearing a Libel read by another, laughs at it; or who barely says, such a Libel was made upon such a Person, whether he speaks it with or without Malice, shall not in respect of any such Act be adjudg'd the Publisher of it. *Ib.*

But

But it seems to be settled, that the bare Printing of a Petition to a Committee of Parliament (which would be a Libel against the Party complain'd of, if it were made for any other Purpose, than as a Complaint in a Course of Justice) and delivering Copies thereof to the Members of the Committee, shall not be look'd upon as the Publication of a Libel, inasmuch as it is justify'd by the Order and Course of Proceedings in Parliament, whereof the King's Courts will take judicial Notice. *Ibid.*

He who is convicted of a Libel, may be condemned to pay such Fine, and also to suffer such Corporal Punishment, as to the Court in Discretion shall seem proper, according to the heinousness of the Crime, and the circumstances of the Offender. *Ibid.*

*Per Holt*, the bare copying out of a Libel by one that is neither Contriver nor Composer, is highly criminal, for the Essence of a Libel consists not in the infamous Matter; for if a Man speaks such Words, unless such Words be put in writing, he is not guilty of a Libel. 2 *Salk.* 417.

If *H.* contrives any Treasonable Matter, and another writes down the Contrivance, the Writer is as guilty as the Inventor. *H.* 418.

If a Libel be publickly known, having a written Copy of it, is an Evidence of a Publication, but otherwise, where it is not known to be published. *Ibid.*

Writing the Copy of a Libel is writing of a Libel, and if the Law were otherwise, Men might write Copies, and print them with Impunity. 2 *Salk.* 419.

When a Libel appears under a Man's own Hand writing, and no other Author is known, he is taken in the manner, and it turns the Proof upon him; and if he cannot produce the Composer, it is hard to find that he is not the very Man. *Ibid.*

*Waller* spoke these Words to one *Bostock*, *I heard that five or six of the Lords of the Council* have Reflections on the King and Council held to be Libels.



*have kneeled to the King for Toleration of Religion; and Bostock writ to another, that his Warden, the Arch-Papist, and five or six other of the Council, had kneeled to the King for Toleration of Religion, that the Prince that was the Pillar is now gone, and that Northampton would now shew himself what he hath been.* These Speeches, Declarations and Writings, and the publishing of these Matters in Letters, were holden by the whole Court to be infamous Libels and Scandals, and *Waller and Bostock* were both punish'd by Sentence, with Loss of their Ears, Whipping, Imprisonment during Life, and each fined in great Fines to the King. *Pasch. 1 Jac. in Canc. stellat. the Earl of Northampton's Case. Hughes Abr. 1244.*

And severely  
punish'd.

Printing a Dying Speech  
which has  
Words reflecting on the  
Government,  
or a private  
person, criminal.

If a Printer compose a Libel against a private person not in Authority, he may be indicted and punish'd for it; and so he may who prints a Libel against a Magistrate, much more one who does it against the King and State. Nor can the Defendant excuse himself by saying they were dying Speeches, or the Words of dying Men; for if a Man would be as wicked at his Death as he had been in his Life, and justify his Villany, he who publishes it is punishable: As where a Highwayman shall at the Gallows arraign the Justice of the Law, and of the Judges who condemned him, he who publishes this shall not go unpunish'd. *State Tryals, Vol. 1. 982.*

No Excuse to  
say it was his  
Trade to publish Books.

Libellous  
Pamphlets  
may be seiz'd,  
and the Authors and  
Publishers punish'd.

Writers of  
false News,  
punishable.

No Excuse for the printing or publishing a Libel, to say he did it in the way of Trade, or to maintain his Family. *Ib. Vol. 1. 986.*

Resolv'd by all the Judges, that where Persons write, print, or sell any Pamphlet, scandalizing the publick or private Persons, such Books might be seiz'd and the Persons punish'd by Law, and that all Persons exposing Books to Sale reflecting on the Government, might be punish'd; and farther, that all Writers of News, tho' not scandalous, seditious, or reflecting on the Government, if they wrote false News, were indictable and punishable. *Ib. 2 Vol. 477.*

One

One was indicted for a Libel in scandalizing Reflecting on the King's Witnesses, and reflecting on the Ju- the King's  
stice of the Nation, and had Judgment of Pillory Witnesses,  
and Fine. *Ib.* 3 *Vol.* 50.

Indictment for a Misdemeanor in sending li- Letters sent by  
bellous Letters to his Correspondents by the Post, the Post, ad-  
suggesting that the Plot for which the Lord Ruf- judg'd to be  
sel, Sidney, &c. had been convicted, was a Sham, Libels.  
&c. *Ib.* 3 *Vol.* 313.

The making a seditious Libel, held to be an Making a Li-  
actual Breach of the Peace, for which a Peer bel, held a  
might be committed. *Ib.* 3 *Vol.* 738. Breach of the

It must be prov'd to be written in the County Peace, for  
laid in the Indictment, to convict the Defendant which a Peer  
of making the Libel, all Matters of Crime being might be com-  
local. *Ib.* 3 *Vol.* 774, 775. mitted.

The causing of a Libel to be printed, is a Pub- Must be pro-  
lication in that County where it is printed. *Ib.* ved to be writ-  
4 *Vol.* 670. ten in the  
County.

A general Reflection on the Government, is a Publication.  
Libel, tho' no particular person is reflected on. General Re-  
*Ib.* 4 *Vol.* 672. flection a Li-  
bel.

A Writing traducing one that was dead, held Libelling a  
to be a Libel. *Ib.* 4 *Vol.* 804. dead Man.

The writing against a known Law, is held to Writing a-  
be criminal. *Ib.* 4 *Vol.* 903. gainst a Law.

## Libraries.

Whereas several charitable Persons have of late 7 *A. c.* 14.  
Years erected Libraries within several Parishes Parochial Li-  
and Districts in England and Wales, it is hereby enacted, braries to be  
that in every Parish or place where such Library is or preserv'd for that in every Parish or place where such Library is or preserv'd for  
shall be erected, the same shall be preserv'd for the use the Uses they  
appointed by the Founder. *Stat.* 7 *A. c.* 14. were founded.

And every Incumbent, Minister, or Curate, of a Pa- Parson to give  
rish, before he shall be permitted to use such Library, Security to  
shall give such Security for the Preservation thereof, and preserve the  
Observation of the Rules and Orders appointed by the Library.  
Founder, &c. as the proper Ordinary shall think fit. *Ib.*

And if any Book shall be taken away and detained, it Action given  
shall be lawful for the said Incumbent, Curate, or any other for Books ta-  
person, to bring an Action of Trover in the Name of the ken away.  
proper

And treble Damages.

Ordinary, &c. may visit such Libraries and redress Mismanagements.

He may depute Persons to see what condition they are in. Catalogue to be made by the Parson, and registred by the Ordinary.

Library to be secur'd by the Ordinary on the Death of the Incumbent.

If the Vestry meet in the Library, to be lock'd up afterwards.

Benefactions registred.

Donor and Ordinary to appoint Rules to be observ'd.

Books not alienable.

Warrant from a Justice to

proper Ordinary, and recover treble Damages, to be applied to the use of the said Library. *Ib.*

And it shall be lawful for the Ordinary, his Commissary or Official, or for the Arch-deacon, his Official or Surrogate, by his Direction, if such Arch-deacon be not Incumbent of the place, to enquire at his or their Visitation, into the Condition of such Libraries, and to redress the Grievances and Defects concerning the same. *Ib.*

And it shall be lawful for the Ordinary from time to time to appoint such Persons to view the Condition of the said Libraries, as they shall think fit. *Ib.*

And where any Library is appropriated to the use of the Minister of any Parish, such Minister or Curate within six Months after his Institution, Induction, or Admission, shall make a Catalogue of all Books remaining in such Library, and sign the same, thereby acknowledging them to be in his Custody, which shall be deliver'd to the proper Ordinary within the time aforesaid, to be registred *Gratis*. *Ib.*

And where a Library shall hereafter be given to the use of any Parish or Place where there is an Incumbent, Minister, or Curate, in Possession, such Incumbent, &c. shall make a Catalogue as aforesaid, and deliver the same within six Months after he shall receive such Library. *Ib.*

And upon the Death of any Incumbent, &c. the Library belonging to any Parish or Place shall be lock'd up by the Church Wardens or such other Persons as shall be appointed by the Ordinary, till a new Incumbent, &c. shall be inducted or admirted. *Ib.*

Provided that if the place where such Library is kept, shall be used for the meeting of the Vestry or any other Parish Business, &c. the same shall be used as formerly, but after such Business dispatch'd shall be again lock'd up and secur'd; and a Book shall be kept in the said Library wherein the Minister, &c. shall enter all Benefactions, and an Account of all such Books as shall be given, and by whom. *Ib.*

And it shall be lawful for the Ordinary and the Donor, if living, and after his Death for the Ordinary alone, to make such Rules and Orders concerning the same, as he shall think fit, not being contrary to such as the Donor shall have made, which said Orders, shall be entred in the said Book and kept in the Library. *Ib.*

And no Book shall be alienable without the Consent of the Ordinary, and then only where there is a Duplicate of such Book; and if any Book be taken away or lost, a Justice of Peace may grant his Warrant to search for the same,



same, and if found, order it to be restor'd to the Library. search for them.  
*ibid.*

Provided this Act do not extend to the publick Library Ryegate.  
at Ryegate in Surrey. *Ib.*

Limitation.

**B**Y this Statute, no Seisin of the Ancestor in a Writ of 20 H. 3. c. 8.  
Right, cou'd be alledg'd before the Reign of Hen. 2. Seisin in a  
*Stat. Merton 20 H. 3. c. 8.* Writ of

By this Statute, no Seisin in a Writ of Right was to be Right.  
alledg'd, but from the time of Ri. 2. Assizes of Novel 3 Ed. 1. c. 39.  
Disseisin, and *nuper Obijt*, from the Voyage of Hen. 3. into *Westm.* 1.  
*Gascoign*, and in Writs of Mortdancestor, Cosenage, Ayle In Novel Dis-  
and Neise, from the Coronation of Hen. 3. *Stat. 3 Ed. 1. seisin, &c.*  
*cap. 39.* 32 H. 8. c. 2.

No person shall sue, have, or maintain, any Writ of Seisin in a  
Right, or make any Prescription, Title, or Claim, to Writ of Right  
any Lands, Tenements, Rents, Annuities, Commons, or must be al-  
other Hereditaments, of the Possession of his Ancestor or ledg'd within  
Predecessor, and alledge any Seisin or Possession of such 60 Years.  
Ancestor or Predecessor, above Threescore Years before  
the Teste of the Writ, or before the said Prescription, Ti-  
tle, or Claim, sued, brought, or had. *Stat. 32 H. 8. c. 2.*

And no person shall have an Assize of Mortdancestor, Mortdance-  
Cosenage, Ayle, or Writ of Entry, upon the Disseisin of stor within 50  
his Ancestor or Predecessor, who were not seiz'd of the Years.  
said Lands, &c within fifty Years before the Teste of  
the Original. *Ib.*

A Writ upon the Party's own Seisin or Possession shall The Parties  
be within thirty Years before the Teste, and in an Avow- own Seisin  
ry or Cognizance for Rent, Seisin shall be alledg'd with- within 30  
in forty Years. *Ib.* Years.

A *Formedon* in Reverter or Remainder and a *Scire Facias* In Avowry 40  
upon a Fine, shall be sued within fifty Years, and every Years.  
Demandant, Plaintiff, and Avowant, that cannot prove *Formedon* in Re-  
actual Possession or Seisin within the respective Times verter, &c. 50  
above limitted, shall be for ever barr'd of such Writs, Years.  
Actions, Avowries, &c. *Ib.*

By this Statute, popular Actions where the King only 31 Eliz. c. 5.  
hath the Forfeiture, shall be commenc'd within two Actions popu-  
Years, and where the King hath but part of the Forfei- lar, when to be  
ture, and the Informer the rest, the Action shall be com- commenc'd.  
menc'd within one Year. *Stat. 31 Eliz. c. 5.*

Writs of *Formedon* in Descender, Remainder or Rever- 21 Jac. 1. c. 16.  
ter shall be sued within twenty Years after Title accruing, *Formedons* to be  
otherwise

sued within  
20 Years.  
Entry within  
20 Years.

otherwise such Title shall for ever be barr'd. *Stat. 21 Jac. 1. c. 16.*

All Persons having any Right or Title of Entry into any Lands, &c. must enter within twenty Years after Title accrued; the Titles of an Infant, Feme Covert, *Non Compos mentis*, one imprison'd or beyond Sea, are saved, so as they commence their Suit within ten Years after such Imperfections removed. *Ib.*

Actions on  
the Case, &c.  
to be com-  
menced with-  
in 6 Years.

Also, all Actions upon the Case, (other than for Slander) Actions of Account, (other than what concern Merchandize between Merchant and Merchant,) Actions of Trespass, *Quare clausum fregit*, Debt upon lending, or Contract without Specialty, or Arrearages of Rent, Actions for Detinue, Trover, Replevin, shall be commenced within six Years after the Cause of Action, and not after. *Ibid.*

Affault, &c.  
within 4  
Years.  
For Words  
within 2  
Years.  
No more  
Costs than  
Damages.

All Actions of Trespass, of Assault, Menace, Battery wounding, and Imprisonment, shall be commenced within four Years after such Cause of Suit, and not after. *Ib.*

All Actions on the Case for Words, shall be commenced within two Years after the Words spoken, and not after, and the Plaintiff in an Action for Words shall recover no more Costs than Damages, if the Jury assess under forty Shillings Damages. *Ib.*

The Rights of  
Persons dis-  
abled to sue,  
saved.  
Proviso in  
case of Writs  
of Error and  
Outlawries  
revers'd.

The Right of Infants, Feme Coverts, *Non Compos mentis*, Persons imprison'd or beyond Sea is saved, so that they commence their Suits within the time above limited after their Imperfections are remov'd. *Ib.*

And if in any of the said Actions Judgment be given for the Plaintiff, and afterwards revers'd for Error, or if a Verdict pass for the Plaintiff, and Judgment be afterwards given against him upon Matter alledg'd in Arrest of Judgment, or if such Actions be brought by Original, and the Defendant outlaw'd and shall after reverse the Outlawry, then the Plaintiff, his Heirs, Executors or Administrators, may commence a new Action within one Year after such Judgment revers'd or Judgment given against the Plaintiff, or Outlawry revers'd, and not after. *Ib.*

In Actions of  
Trespass, ten-  
der of Amends  
may be plead-  
ed.

And in all Actions of Trespass, *quare clausum fregit*, wherein the Defendant shall disclaim in his Plea, all Title or Claim to the Land in which the Trespass is supposed to be done, and the Trespass be by Negligence or involuntary, the Defendant shall be admitted to plead a Disclaimer, and that the Trespass was by Negligence or involuntary, and a tender of sufficient Amends for such Trespass before the Action brought, and if the Issue be found for the Defendant, or the Plaintiff be Nonfuit, he shall

shall be barr'd of all Actions and Suits concerning the same. *Ib.*

From and after the 25th of March 1696. no person 7 W. 3. c. 3. shall be indicted, try'd or prosecuted, for Treason, or for No person Misprision of Treason, done after the said 25th of March, shall be prosecuted for where by any Corruption of Blood may ensue, unless the indicted for Indictment be found by a Grand Jury within three Years High Treason after the Treason or Offence committed. Stat. 7 W. 3. unless indicted within 3 cap. 3. Years.

Provided that this Act shall not extend to Impeach-ments or other Proceedings in Parliament. *Ib.* Unless im-

Nor to the Treasons of counterfeiting the Coin, the Great Seal, Privy Seal, Sign Manual, or Privy Signet. Or prosecuted for coining, *Ibid.*

No Fine or common Recovery, nor any Judgment in &c. any real or personal Action, shall after the first of May 10 & 11 W. 3. 1699. be revers'd or avoided for any Error or Defect c. 14. No Fine, therein, unless the Writ of Error or Suit for reversing Recovery, or such Fine, Recovery, or Judgment, be commenced and Judgment, to prosecuted with Effect within twenty Years after such be revers'd for Fine levied, or such Recovery suffer'd, or Judgment sign- Error after 20 ed, and entred of Record. Stat. 10 & 11 W. 3. c. 14. Years.

Provided that if any person who is entitled to such Proviso for Writ of Error, shall at the time of such Title accrued, Persons disabled within the Age of twenty one Years, Covert, Non Com- bled to sue. pos, imprison'd, or beyond the Seas, then such person, his Heirs, Executors or Administrators, (tho' the twenty Years are expir'd) may bring a Writ of Error for reversing such Fine, Recovery, or Judgment, as if this Act had not been made. so as the same be done within five Years after such Disability remov'd. *Ib.*

Where any Plaintiff shall be stay'd or prevented from 12 & 13 W. 3. proceeding by Privilege of Parl, he shall not be barr'd c. 3. No Limi- by any Statute of Limitation, or Nonsuited, dismiss'd, tation in case or his Suit discontinued for want of Prosecution, but at of privilege of the rising of the Parliament shall be at Liberty to proceed part. to Judgment and Execution. Stat. 12 & 13 W. 3. c. 3.

No Claim or Entry made upon any Lands, Tene- 4 & 5 A. c. 16. ments, or Hereditaments, shall be of any Effect to avoid No Entry or, a Fine levied with Proclamations according to the Sta- Claim avail- tute, or shall be a sufficient Entry or Claim within the able, unless an Statute of 21 Jac. 1. for Limitation of Actions, unless up- Action be on such Entry or Claim. An Action shall be brought brought upon within one Year after the making thereof, and prosecuted it within a with Effect. Stat. 4 & 5 A. c. 16. Year.

If any person against whom Cause of Action for Sea- Acts of Limi- mens Wages, or for Trespas, Detinue, Trover, Replevin, tation not Account, Case, or Debt, grounded on Contract, or lend- binding where ing, the Defendant



is beyond  
Sea.

ing, or for Rent, shall at the time of such Cause of Suit accrued, be beyond Sea, then the person entitled to such Suit, may bring an Action after the Return of such person, so as he brings the same within such time after the Return, as is limited by the 1 Jac. 1. *Ib.*

*Quere.*

### READINGS.

Limitation  
defin'd.

Limitation, as it is taken in Law, is a certain time prescrib'd by Statute, within the which the Demandant in the Action must prove himself, or some of his Ancestors to be seiz'd. 1 *Inst.* 114.

To what Acti-  
ons the Statute  
of the 32 H. 8.  
extends.

By the said Statute of 32 H. 8. the Limitation of time in a Writ of Right, is reduc'd to Three-score Years next before the Teste of the Writ, and so of other Actions, as by the said Statute appeareth: But it is to be observ'd, that this Act of 32 H. 8. extendeth not to a *Formedon* in the Descender, nor to the Services of Escuage, Homage, and Fealty, for a Man may live above the time limited by the Act; neither doth it extend to any other Service which by common Possibility may not happen or become due within sixty Years, as to cover the Hall of the Lord, or to attend on his Lord when he goeth to War, or the like; nor where the Seisin is not traversable or issuable: Neither doth it extend to a Rent created by Deed, nor to a Rent reserv'd upon any particular Estate; for in the one Case the Deed is the Title, and in the other the Reservation: Nor to any Writ of Right of Advowson, *Quare Impedit*, or Assize of Darrein Presentment, or any Writ of Right, of Ward, or Ravishment of Ward, &c. but they are left as they were before the Statute of 32 H. 8. *Ib.*

Where in  
Avowry Seisin  
need not be  
alleg'd with-  
in 40 Years.

*A.* seiz'd of a Manor by Deed indented, enfeoff'd thereof *J. S.* and his Heirs, rendring yearly to *A.* his Heirs and Assigns, ten Pounds Rent; *A.* died seiz'd, the Rent descended to his Son and Heir, who died intestate, his Administrators distrained, and avowed for the Rent, it was resolv'd in this Case upon the Statute of 32 H. 8. *cap.* 37. which gave Distress to an Executor or Admi-

Administrator in like Manner and Form as the Testator might and ought to have done, and upon another Clause of the said Statute, that the Administrators were not driven in the Avowry for the Rent to alledge any Seisin within forty Years; for in case of Reservation or Grant of a Rent, there the Deed is the Title, and the Commencement of it appeareth to be within time of Memory, and no Encroachment in such Case shall hurt, neither is any Seisin material, but the Statute shall be intended when the Avowant was driven to alledge Seisin by Force of any Statute of Limitation, and that was when the Seisin was material, and of such Force as that it should not be avoided in an Avowry, altho' it was by Encroachment. 8 Co. 40. Sir William Foster's Case.

In *Assumpsit*, after Verdict it was moved in stay of Judgment, that the Promise is alledg'd to be made beyond the time limited in the Statute of 21 Jac. and the Action is not brought within the time limited thereby, it was the Opinion of the Court, that if it appears so by the Plaintiff's own shewing, the Plaintiff cannot maintain the Action, but Judgment shall be given against him; but if the Contract or *Assumpsit* for Debt be alledg'd to be within the time limited by the Statute, and upon *non debet* or *non Assumpsit* pleaded, it doth appear upon the Evidence, that the *Assumpsit* or Contract was beyond the time limited, and so the Evidence cannot maintain the Action, the Defendant shall take the Advantage thereof; for the Statute is in the Negative that he shall not maintain an Action but within such a time limited by the Statute. *Trin. 4 Car.* in *C. B. Brown and Hancock*. 1 Cro. 81.

In *Assumpsit*, the Case was, the Defendant had Where a thing  
a Dog which did kill five of the Plaintiff's Sheep, is to be done  
and the Defendant in Consideration the Plaintiff upon Request,  
would not sue him for the said Sheep, and also in the Action  
Consideration the Plaintiff would suffer the De- may be  
fendant to do away the Sheep, promis'd to give brought with-  
him Recompence for the said Sheep upon Re- in 6 Years af-  
quest; and the Plaintiff alledg'd the Promise to ter the Re-  
quest.

be made 18 *Jac.* and that afterwards 2 *Car.* he did request so much of the Defendant for the Sheep: The Defendant pleaded the Statute of 21 *Jac. cap.* 16. of Limitation of Actions, and alledg'd, that the Action was not brought within six Years of the Cause of the Action accrued, which was the Promise. But it was adjudg'd, that the Plea was not good; for it was resolv'd, that where a thing is to be done upon Request, till Request be made there is no Cause of Action, and the Time and Place of the Request is issuable, and the meaning of the Statute was but to bar the Plaintiff from the time that he had compleat Cause of Action, and that was not until the Request was made, and where a Request is material, it ought to be shew'd in pleading Judgment, was enter'd for the Plaintiff. *Mich.* 4 *Car.* in *B. R. Shetford and Borough's Case. Godbolt* 437. 1 *Car.* in *B. R. Perk's Case. Hill.* 13 *Jac.* in *B. R. Hill and Wade's Case* adjudg'd accordingly.

Debt for Rent  
upon a Lease  
indented, not  
within the Sta-  
tute of Limi-  
tations.  
So Rent  
Charge, &c.

Resolv'd, that Debt brought for Arrearages of Rent upon a Lease for Years by Indenture, is out of the Statute of 21 *Jac.* of Limitation of Actions. Resolv'd, that a Rent Charge which is founded upon a Deed or a Reservation of Rent upon a Fee Simple by Deed, are both out of the Statute of 32 *H.* 8. of Limitations. *Mich.* 5 *Car.* in *C. B. Freeman and Statle's Case. Hatton* 109.

Where the Du-  
ty arises on  
Consideration  
executory, the  
Defendant  
must plead  
*quod Actio non  
accrevit*, &c.

*Assumpsit* that in Consideration that the Plaintiff at the Defendant's Request would receive *A.* and *B.* into his House and diet them, the Defendant promis'd, &c. *Non Assumpsit infra sex Annos* was pleaded, the Plaintiff demurred, and held no Plea, for the Defendant cannot in such Case plead *Non Assumpsit infra sex Annos*, but *Actio non accrevit infra sex Annos*, for 'tis not material when the Promise was made, if the Cause of Action be within six Years, and the dieting might be long afterwards; and tho' it appears upon the Face of the Declaration that the Cause of Action did not arise within six Years, yet the Defendant shall not take Advantage of that without pleading, because there might be an Ori-



Original sued out, which the Plaintiff cannot otherwise shew than by way of Replication upon the Defendant's putting him upon it. *Gould. v. Johnson. Hill. 1 Ann. B. R. 2 Salk. 422.*

One seiz'd in Fee having Issue two Daughters, Statute of Li-  
devis'd his Land to his Grandson by his eldest mitations runs  
Daughter in Fee, the eldest Daughter being dead not against H.  
at the time of the Demise; the Grandson died unless actually  
without Issue, and the Heir of the Grandson be- ousted or dis-  
ing the Heir on the part of the Father, and the seiz'd.  
Heir of the other Coparcener, enter'd into the  
Land and took the Profits by Moieties for twenty  
Years together, thinking, according to the Op-  
inion of Sir *Matthew Hale* in his younger Years;  
(who was their Counsel) that the Devise was void  
for one Moiety; now the Mistake being disco-  
ver'd, the Heir of the Grandson brought an  
Ejectment against the Heir of the other Copar-  
cener, and upon a special Verdict found, it was  
objected in his Behalf, that the Devise was void  
for one Moiety, but this being over-rul'd, it was  
then objected, that the bringing of this Eject-  
ment against the Heir of the other Coparcener  
for this Moiety, admitted the Plaintiff to be out  
of Possession for twenty Years, and then he was  
barr'd by the Statute of Limitations. *Sed per Cur.*

The Statute of Limitations never runs against  
a Man but where he is actually ousted or dis-  
seiz'd, and true it is, one Tenant in common  
may disseize another, but then it must be done  
by actual Disseisin, and not by bare Perception  
of Profits only, but here the Difficulty is not so  
great; there is no Tenancy in common in this  
Case, for the Heir of the Grandson had the whole  
by Devise, and the other is a meer Stranger; and  
where two Men are in Possession, the Law will  
adjudge it in him that hath the Right. A Man  
may be Tenant in common by Prescription, yet  
he may not be Tenant in common by wrong; Tenants in  
nor can a Man be disseiz'd of an undivided Moi- common may  
ety; therefore the bringing the Ejectment, ad- be by Pre-  
mits nothing: For if a Man be seiz'd of the whole, scription, not  
and by Wrong.

and makes a Lease to another of a Moiety undivided, and a Stranger ousts the Lessee, he must bring his Ejectment of a Moiety, and so if they be both ousted, they must bring several Ejectments. *Reading v. Royston. Hill. 1 Ann. B. R. 2 Salk. 423.*

Cannot join in Ejectment. In Trespass for Assault and Battery, the Defendant pleaded *Non Culp. infra sex Annos* by Mistake, and not according to the Statute, which is but four Years; the Plaintiff demurr'd, and after Judgment, it was adjudg'd an ill Plea; for if it be consider'd as at Common Law, there was no such Plea, if on the Statute the Act is not pursued, and the Defendant could not take Issue of it, for *quod est Culp. infra sex Annos* is an Issue immaterial, because it may be, the Jury might find him not guilty *infra quatuor Annos*, but guilty *infra sex Annos*, Judgment for the Plaintiff. *Blackmore v. Tidderly. Hill. 3 Ann. B. R. 2 Salk. 423.*

Not guilty within 6 Years is ill in Trespass. Debt was brought in the Palace Court, and after some Proceedings there, the six Years expir'd, the Defendant sued a *Habeas Corpus*, and removed the Cause into *B. R.* where the Plaintiff declar'd *de Novo*, and the Defendant pleaded that the Cause of Action did not accrue within six Years before the *Teste* of the *Habeas Corpus*; and this was held to be a good Plea, but that the Plaintiff might reply the Suit below, and shew that to have been within the six Years, not that this Suit was a Continuance of that Suit below, but that the Plaintiff had rightfully and legally pursued his Right, and it should not be in the Power of the Defendant to defeat or hinder him of a Remedy without any Default; as where one brings an Action before the Expiration of six Years, and dies before Judgment, the six Years being then expir'd, this shall not prevent his Executor. *Matthews v. Phillips. cited and agree. Mich. 6 Ann. B. R. 2 Salk. 424.*

Action removed by *Habeas Corpus* Statute of Limitations pleaded above. Plaintiff may reply the Suit below was within 6 Months.

## London.

THE City of London shall enjoy her ancient Liberties and Customs. *Magna Charta, 9 H. 3. c. 9.* *Mag. Char. 9 H. 3. c. 9.*

The Lords of Rents in London, are enabled to recover them by Writ of *Gavellet* in the Hustings; and if the Tenant do not appear and satisfy the Arrears, after a Year and a Day, the Tenements shall remain to the Lord of the Fee, by Judgment of the Court in *Demefne* for ever. *Stat. of Gavellet, 10 Ed. 2.* *Stat. of Gavellet. 10 Ed. 2.*

This Act recites. That Sir William Bowyer, Kt. Mayor of the City of London, having found out several great Springs at *Hampstead, Marybone, Hackney, Muswell Hill*, and divers other Places within five Miles of the City, and found Means to convey Water from thence into the said City, by Conduits, Pipes, &c. at the Charges of the Citizens, it is hereby enacted, That it shall be lawful to the Mayor and Commonalty of the said City of London, their Successors and Assigns, to enter into the Grounds and Possessions, as well belonging to the Crown as to any other Persons, where any Springs may be found, except in Houses, Gardens, Orchards, or Places inclosed with Walls; and there to dig Pits and Trenches to erect Heads, lay Pipes, and do all other Things that shall be necessary for the Conveyance of such Water and Springs to the said City and Suburbs, and to have free Egress and Regress to repair and amend the same, and to do all Things necessary, as well for the finding out new Springs, as for the Conveyance of Water or Springs already found, or hereafter to be found, to the said City and Suburbs without interruption. *Stat. 35 H. 8. c. 10.*

The City empowered to lay Pipes thro' any Ground, to convey the Water to the Town.

Provided that the Mayor, &c. make satisfaction to the Owners or Occupiers of the Soil, within one Month after the Ground shall be broken up or digg'd. *Ibid.*

Every Citizen and Freeman of London, and every other Person inhabiting within the said City or Liberties, being a Tradesman, Victualler, or labouring Man, who shall have any Debt owing to him under 40 s. by any Citizen, Victualler, Tradesman, or labouring Man, inhabiting in the said City or Liberties, may cause such Debtor to be warn'd by the Officer of the Court of Requests there, by Writing left at such Debtors Dwelling House, or by other reasonable Notice, to appear before the Commissioners of the said Court of Request, who are empower'd to make such Orders between the Parties, Debtor and Creditor, *3 Jac. c. 15.* *Court of Conscience estab-lish'd in London for recovery of Debts under 40 s.*



ditor, as to such Debts as do not amount to 40 s. as shall stand with Equity and good Conscience; and such Orders shall be register'd as formerly, and obey'd by the Parties. And the Commissioners are impower'd to administer an Oath to the Witnesses. *Stat. 3 Jac. c. 15.*

And if any Action shall be brought for the recovery of any Debt under 40 s. in any other Court, and the Defendant prove that at the time of the Action brought, he was inhabiting and resident in *London* or the Liberties thereof, the Plaintiff shall have no Costs, but shall pay Costs to the Defendant. *Ibid.*

And if any Creditor or Debtor, after Notice given as aforesaid, without just Cause, refuse to appear before the said Commissioners, or shall not perform their Order concerning such Debts, as aforesaid, the said Commissioners may commit them to one of the Counters until they shall perform such Order. *Ibid.*

Provided that this Act shall not extend to any Debt for Rent, or any other real Contracts; nor to any Debt arising by reason of any Cause concerning a Testament or Matrimony, or any Thing properly belonging to the Ecclesiastical Court, although the same be under 40 s. *Ibid.*

19 *Car. 2. c. 2.* A Judicature was erected by this Act for the determining of differences concerning Houses burnt or demolish'd by the Fire of *London*, Anno 1666. *Stat. 19 Car. 2. c. 2.*  
 19 *Car. 2. c. 3.* An Act was made for the speedy and regular rebuilding of the City of *London*, and preventing Fires for the future, whereby it is provided, that if any Person should be convicted before the Lord Mayor, or any two Justices of Peace of the City, of building contrary to this Act, his House shall be deem'd a common Nuisance; and that he shall enter into a Recognizance to demolish the same, or amend it according to this Act, and in default of entering into such Recognizance, he shall either be committed 'till he amend the same, or his House be demolish'd by order of the Court of Aldermen. *Stat. 19 Car. 2. c. 3.*

How the Houses shall be built. And it is enacted that the outsides of all Buildings about the City be of Brick or Stone, or of both, except Door Cases and Window Frames, the Breasts, Sommers, and other parts of the first Story to the Front, between the Peers, which may be of Timber for convenience of Shops; so that the Doors, Breasts, Sommers, and Window Frames be discharg'd of the burden of the Fabrick by Arch-work of Brick or Stone. *Ibid.*

As for the proportions and scantlings for Stories, Walls, and Timbers, see the Act at large. *Ibid.*

An additional Act for rebuilding of the City of Lon- 22 Car. 2.  
don, uniting of Parishes, and rebuilding of the Cathedral c. 11.  
and Parochial Churches within the said City. Stat. 22  
Car. 2. c. 11.

By this Statute it is enacted, that the annual Tythes, 22 & 23 Car. 2.  
or Sums assess'd in lieu of them, in the Parishes of London c. 15.  
where the Churches were demolish'd by the Fire, should Sums to be  
be as follows, viz. The Parish of *Alballows Lombard Street*, assess'd on the  
110 l. *St. Bartholomew Exchange*, 100 l. *St. Bridget*, alias *Inhabitants*  
*Brides*, 120 l. *St. Bennet Fink*, 100 l. *St. Michael Crooked of the Pa-*  
*Lane*, 100 l. *St. Christopher*, 120 l. *St. Dionis Backchurch*, rishes burnt,  
120 l. *St. Dunstan in the East*, 200 l. *St. James Garlick* in lieu of their  
*Hytbe*, 100 l. *St. Michael Cornhill*, 140 l. *St. Michael Bas-Tythes.*  
*fishaw*, 132 l. 11 s. *St. Margaret Lotbbury*, 100 l. *St. Ma-*  
*ry Aldermanbury*, 150 l. *St. Martin Ludgate*, 160 l. *St.*  
*Peter Cornhill*, 110 l. *St. Stephen Coleman Street*, 110 l. *St.*  
*Sepulchres*, 200 l. *Alballows Bread Street* and *St. John the*  
*Evangelist*, 140 l. *Alballows the Great and Alballows the Less*,  
200 l. *St. Alban Woodstreet* and *St. Olaves Silver Street*,  
170 l. *St. Anne and Agnes* and *St. John Zachary*, 140 l. *St.*  
*Austin* and *St. Faith*, 172 l. *St. Andrew Wardrobe* and *St.*  
*Anne Black Fryars*, 140 l. *St. Antholin* and *St. John Bap-*  
*tist*, 120 l. *St. Bennet Grace Church* and *St. Leonard East*  
*Cheap*, 140 l. *St. Bennet Pauls Wharf* and *St. Peters Pauls*  
*Wharf*, 100 l. *Christs Church* and *St. Leonard Foster Lane*,  
200 l. *St. Edmund the King* and *St. Nicholas Acons*, 180 l.  
*St. George Botolph Lane* and *St. Botolph Billingsgate*, 180 l.  
*St. Lawrence Jury* and *St. Magdalen Milk Street*, 120 l. *St.*  
*Magnus* and *St. Margaret New Fish Street*, 170 l. *St. Michael*  
*Royal* and *St. Martin Vintry*, 140 l. *St. Matthew Friday Street*  
and *St. Peter Cheap*, 150 l. *St. Margaret Pattons* and *St. Ga-*  
*briel Fenchurch*, 120 l. *St. Mary at Hill* and *St. Andrew Hub-*  
*bard*, 200 l. *St. Mary Woolnoth* and *St. Mary Woolchurch*,  
160 l. *St. Clement East Cheap* and *St. Martin Organs*, 140 l.  
*St. Mary Abchurch* and *St. Lawrence Pountney*, 120 l. *St. Ma-*  
*ry Aldermary* and *St. Thomas Apostles*, 150 l. *St. Mary le Bow*,  
*St. Pancrass Soper Lane*, and *Alballows Hony Lane*, 200 l. *St.*  
*Mildred Poultry* and *St. Mary Colechurch*, 170 l. *St. Michael*  
*Wood Street* and *St. Mary Staining* 100 l. *St. Mildred Bread*  
*Street* and *St. Margaret Moses*, 130 l. *St. Michael Queen Hytbe*  
and *Trinity*, 160 l. *St. Magdalen Old Fish Street* and *St. Gre-*  
*gory*, 120 l. *St. Mary Somerset* and *St. Mary Mountbaw* 110 l.  
*St. Nicholas Coleabby* and *St. Nicholas Olaves*, 130 l. *St. Olave*  
*Jewry* and *St. Martin Ironmonger Lane*, 120 l. *St. Stephen*  
*Walbrook* and *St. Bennet Sherehog* 100 l. *St. Switbin* and *St.*  
*Mary Botbaw*, 140 l. *St. Vedast*, alias *Fosters*, and *St. Mi-*  
*chael Quern*, 160 l. Stat. 22 & 23 Car. 2. c. 15.

Assessments  
made by the  
Alderman of  
each Ward,  
&c.

To be levied  
by Distress  
and Sale.

22 & 23 Car.  
2. c. 17.

Mayor, Al-  
dermen, and  
Common  
Council, to  
order the pa-  
ving of the  
Streets, clean-  
ing the Sew-  
ers, &c.

And to im-  
pose Taxes for  
the same pur-  
pose.

Streets against  
Church-  
yards.

Assessment to  
be levied by  
Distress and  
Sale.

And these Sums shall be the annual Maintenance of the respective Parsons, Vicars and Curates of the said Parishes, over and above their Glebe and other Perquisites, Gifts, and Bequests: And the Inhabitants of the several Parishes are to be assess'd towards raising the said Sums, by the Aldermen and Common Councilmen of the several Wards, &c. and upon refusal of any Inhabitant to pay the Sum assess'd, the Lord Mayor is empower'd to grant his Warrant to the Collector, with assistance of a Constable, to levy the same by distress and sale of the Parties Goods. *Ibid.*

See the Act at large.

This Act recites, that whereas by the Statute for rebuilding the City of London, made in this present Parliament, it was enacted, that the Numbers and Places for Common Sewers, Drains and Vaults, and the manner of Paving and Pitching the Streets in the said City, should be under the direction of the Lord Mayor, Aldermen, and Common Council, or any seven of them, together with the Surveyors within their respective Precincts; and the said Persons are thereby authoriz'd to impose Taxes upon Houses, in proportion to the Benefit they receive thereby, and to levy the Sums assess'd on them by Distress and Sale. It is hereby enacted, that the Paving, Pitching, and Cleansing the said Streets, with the Drains and Sewers, shall remain under the direction of the said Lord Mayor, Aldermen, and Commonalty; and be executed by such Persons as they, or any seven of them shall appoint. *Ibid.* Stat. 22 & 23 Car. 2. c. 17.

And the said Mayor and Commonalty are authoriz'd to impose Taxes upon the several Wards and Precincts, and direct their Precepts to the respective Deputies to assess the same, in such Manner as by this Act is appointed. *Ibid.*

And where any Church or Church-yard shall lie against any Street, it shall be lawful for them to assess a proportionable Sum upon the Parish, to be paid by the Churchwardens; and the Deputies and Common Councilmen shall return Duplicates of their Assessments, with the Scavengers Names, within twenty Days after the Receipt of their respective Precepts; and in default of such Returns, the Mayor, &c. are empower'd to make the said Assessments; and if payment be not made within six Days after demand, the Scavenger shall levy the same by Distress and Sale. *Ibid.*

And the Money collected shall be paid into the Chamber of London, and not be issued out thence but by order



of the Mayor, &c. and Commonalty, or seven of them.  
*Ibid.*

And where any Inhabitant shall be aggrieved by defects or decays of the Pavements, or for want of cleansing the Streets, upon Proof thereof, the said Mayor and Commonalty, are authoriz'd to grant a Warrant to the Chamberlain of *London*, to issue Money for amending the same, and defraying the Charges thereof. *Ibid.*

And the said Mayor, Aldermen, and Common Council, are enabled to set out and purchase Grounds for Lay- Laystalls. stalls and Repositories for the Receipt of the Dirt and Rubbish carried out of the said City, &c. and the Money for purchasing the same shall be paid out of the Money arising by Coals, appointed for the publick Uses of the said City. *Ibid.*

And if any Person shall find themselves aggriev'd by Appeals to the any Charges or Impositions made by virtue of this Act, it Mayor and shall be lawful for them within five Days after demand Aldermen by of any Sum assess'd upon them, to appeal to the Lord Persons ag- Mayor and Court of Aldermen, whose Determination griev'd. therein shall be final. *Ibid.*

It is hereby enacted, That the Judgment given in the 2 *W. & M.* Court of King's Bench in *Trinity Term* 35 *Car. 2.* for c. 8. *Sess. 1.* seizing into the late King's Hands the Liberties, Privi- The Judg- ledges and Franchises of the Mayor, Commonalty, and ment against Citizens of the City of *London*, shall be revers'd and made the City va- void. *Stat. 2 W. & M. c. 8.* cated.

And all Charters, Letters Patents, and Grants for in- Charters and corporating the said Citizens and Commonalty of the said Patents since City, or any of them, made or granted by the late granted to King *Charles II.* since the said Judgment, or the late King the City void. *James II.* are adjudg'd null and void. *Ibid.*

Provided that all Judgments, and other Things done But all Acts in pursuance of the said Grants or Charters shall be held done in pur- good and lawful, and no Person prosecuted for what he done in pur- suance of has done by such Authority. *Ibid.* them con-

After the 15 of *December*, 1690. every Inhabitant of firm'd. the Out Parishes in *Middlesex* and *Westminster*, and the Li- 2 *W. & M. c. 8.* berties thereof, and in the Borough of *Southwark*, and in *Sess. 2.* any of the Streets, Lanes, or Allies within the Bills of Citizens to Mortality, and the Town of *Kensington*, shall twice in cleanse the every Week, viz. every *Wednesday* and *Saturday* at least, Streets before. sweep and cleanse the Street before their respective Houses, their own Buildings, and Walls, and the Buildings and Walls of Doors twice a Churches and other publick Places, that the Dirt and Week. Soil may be ready for the Scavenger, on pain of 3 s. 4 d. for every Neglect. *Stat. 2 W. & M. c. 8. Sess. 2.*

And

No Dust or Filth to be thrown into the Streets.

And that no Person suffer to be thrown, or laid, any Seacoal Ashes, Dust, Dirt, Dung, or other Filth, in any Street, Lane, or Alley, within the Limits aforesaid, on pain of 5 s. *Ibid.*

Or into the Common Sewers.

And no Person shall lay any Ashes, Dirt, or Soil, before the Houses, Buildings, or Walls of any Inhabitant, or against any Church, Church Yard Wall, or any of their Majesties Buildings or Palaces; or lay, or throw into any common or private Sink, Vault, Watercourse, or Common Sewer, or Highway, within the Limits aforesaid, any Ashes, Dirt, Filth, or noysome Thing, but shall keep them in their Houses, Yards, or Backsides, or the Yards or Backsides of Churches or other publick Buildings 'till the Scavenger comes, and then bring them to him, on pain of 20 s. *Ibid.*

Housekeepers of the Royal Palaces, &c. included.

And the respective Church-wardens, and the Housekeepers, and other Keepers of *Whitehall*, *Somerfet-house*, *St. James's-house*, and *St. James's-Park*, the Guard-houses and Stables near them, and other their Majesties Houses, and the Ushers, Porters, and Keepers of the Courts of Justice, and all other publick and other Houses, shall suffer the same Pains and Forfeitures for every the said Offences or Neglects, done or suffer'd before such Church, Church Yard, Palaces, or publick Buildings. *Ibid.*

The Streets not to be incumbered.

And no Person shall wash, keep, or cleanse any Pipes, Barrels, or other Vessels, in any of the Streets, Lanes, or Passages aforesaid, or set out any Dung, Soil, Rubbish, or empty Coaches, to make, or mend, or rough Timber, or Stones to besawn or wrought in the Streets, on pain of 20 l. *Ibid.*

Scavenger's Duty.

And the Scavenger shall every Day in the Week, except *Sundays* and Holy-days, bring Carts, or other fitting Carriages, into their respective Parishes, &c. and give Notice by a Bell or otherwise of their Approach, and stay a convenient Time, that all Persons concern'd may bring their Dirt, &c. to their respective Carts, which they shall daily carry away, on pain of 40 s. for every Neglect. *Ibid.*

Citizens to repair the Pavements before their own Houses.

And all Streets, Lanes, and Allies, now pav'd, shall be repair'd by the Householders Inhabitants there; and where any Houses shall stand empty, they shall be repair'd at the Charge of the Owners, in Manner following, (*viz.*) Every Householder or Owner to pave the Street, &c. before his House, Stables, and Out Houses, unto the Channel or middle of the Street, on pain of 20 s. for every Rod he neglects to pave, or 20 s. a Week 'till the same is sufficiently amended. *Ibid.*

New Streets

And it shall be lawful for one or more Justices of Peace, to be pav'd or where any new Streets or Ways shall be made, to view the same;

same; and if he shall judge them fit to be pav'd or other- amended by  
wise amended, to certify the same to the next Quarter- the Owners of  
Sessions, who are empower'd to take such order for the the Houses,  
Paving or Amending the same as they shall think fit: by Order of  
And the Owners or Inhabitants of the new built Houses Sessions.  
adjoining to the Streets or Ways adjudg'd to be pav'd  
and amended, and directed by an Order of Sessions shall  
pave or amend the same with Stone or Gravel, by a time  
limited, in the Front of their said Houses or Buildings,  
to the middle of the Street, and in default of paying  
or amending their respective proportions, shall forfeit at  
the Rate of 40 s. for every Perch neglected to be done, On pain of 40  
and the like Sum for every Week, till the same be paved s. a Perch.  
or amended; and when once pav'd or amended, the like  
Sum as those, who shall neglect to repair other Streets. *Ib.*

Provided that such Streets as have been accustomed to  
be repaired in another manner, or by other Persons, shall  
be repair'd as formerly, under the pains aforesaid. *Ibid.*

And it is enacted, that within the Parishes of St. Anne  
and St. James Westminster, the Scavengers, &c. shall be  
chosen as by the said respective Acts is appointed: And  
the Rates for the Scavengers, &c. shall be taxed and as-  
sess'd according to the Usage of the said City of West-  
minster, where it is not otherwise in the said Acts provid-  
ed: And all new Buildings to be erected in the said Pa-  
rishes, shall pay proportionably with others. *Ibid.*

And in all other Parishes or Places aforesaid, on every Scavengers  
Monday or Tuesday yearly in Easter Week, two able Trades- chosen in  
men shall be chosen for Scavengers, as other Parish Offi- Easter Week,  
cers &c. are chosen. who being confirmed, under the  
Hands of two Justices of Peace, shall within seven Days  
after take that Office upon them, on pain of 10 l. each;  
and in Case of such Refusal, another to be chosen, who  
shall take the said Office upon him, under the like pain.  
*Ibid.*

The Penalties to be paid to the Surveyors of the High- Penalties levi-  
ways, towards the amending the Highways and Streets of ed by Distress  
the Parish, and to be levied by Distress and Sale, by War- and Sale.  
rant from one Justice; and in default of a Distress, the  
Refuser to be committed till payment. *Ibid.*

And within twenty Days after the Election of the Sca- Scavengers  
venger, a Tax or Assessment shall be made at a Parish- rated.  
meeting, according to a Pound Rate, which being con-  
firm'd by two Justices (who are requir'd to allow the  
same as far as it is reasonable) shall be quarterly paid by  
every respective Inhabitant upon the Demand of the Sca-  
vengers, or other Officers appointed to collect the same:  
And in Case of Neglect or Refusal, shall be levied by a  
Warrant



Warrant from two Justices, by Distress and Sale, and in default thereof, the Offenders to be Imprisoned till the Streets are pay'd. (if the Offender be not a Peer) *Ibid.*

Provided that within 20 Days after the Election of new Scavengers, the old Scavengers shall give up their Accounts to two Justices, and such Sums as shall be remaining in their Hands, shall be paid to the succeeding Scavengers. And if any Scavenger refuse to account or pay such Money as aforesaid, he may be committed by two Justices till he shall account and pay the same. *Ibid.*

Places for laying Dirt in provided.

Provided that the said Scavengers may have Liberty by an Order of the Justices at their *Petit Sessions*, to lay their Dirt in any vacant Place in or near such Streets or Highway, as shall be thought convenient by the said Justices, for the Country Carts returning empty, giving Satisfaction to the Owners of such vacant Places; and where the Demands of the Owners are unreasonable, the said Justices shall moderate and determine the same, allowing an Appeal to the *Quarter Sessions*, whose Determination shall be final. *Ibid.*

Assessment for repairing Highways.

And for the better amending Highways, it shall be lawful to make Assessments upon the Owners and Occupiers of Lands and Tenements, or personal Estate ratable to the Poor in any of the said Parishes, to be made and levied by such Persons as the *Quarter Sessions* shall appoint, and the Money shall be employ'd and accounted for, according to their Direction, for repairing the Highways, and the Money assessed, may be levied by Distress and Sale. *Ibid.*

Not exceeding 4 d. in the pound. Sewers.

Provided such Assessment do not exceed 4 d. per l. per Annum, or 8 d. for every 20 l. personal Estate. *Ibid.*

All new Sewers made since the 12 Car. 2. shall be subject to the Commissioners of Sewers; and the Commissioners are empower'd to alter or amend the same, or make other Sewers where they think fit. *Ibid.*

Lights to be hung out in Winter.

And every House in or near the Street within the Weekly Bills, is required to hang out a Light before the Door till 12 at Night, from *Michaelmas* to *Lady-Day*, on pain of 2 s. except such Persons as shall agree to make use of Lamps, to be plac'd as shall be approv'd by two Justices. *Ibid.*

Prices of Hay sold in London.

And to prevent Abuses in Persons who bring Hay to sell in the Markets within the Weekly Bills, it is enacted that every Truss of old Hay shall weigh 56 Pounds; and every Truss of new Hay, sold between the 1st of *June* and the last of *August*, 60 Pounds, on pain of 1 s. 6 d. for every Truss brought or offer'd to Sale. *Ibid.*

And

And no Person shall suffer his Hay Cart to stand in Hay Carts to any Market within the Weekly Bills, after two in the drive away in Afternoon, from *Michaelmas* to *Lady-Day*, or after 3 from the Afternoon. *Lady-Day* to *Michaelmas*, on pain of 5 s. *Ibid.*

And for the more speedy Punishment of the Offences aforesaid, one Justice of the Peace, upon his own Knowledge or View, Confession or Proof by one Witness, may convict any Offender who shall incur the Penalties aforesaid; one moiety to the Poor, and the other to the Informer, and if no Informer, to the Scavengers for repairing, paving and cleansing the Streets, to be levied by Warrant from one Justice, by Distress and Sale; and in default of a Distress or Payment within six Days, to be committed (if no Peer) till paid. *Ibid.*

And to prevent the breaking up the Streets, the Wheels Cart Wheels of no Cart or Dray us'd in carrying Goods from one part 6 Inches wide of the said Cities to another, shall be less than six Inches and to be wide in the Felley, or be wrought with any Iron work, drawn by 2 or be drawn by above two Horses after the Carriage is Horses, come up the Hills from the Water-side, on pain of 40 s. for the Uses, and to be levied as aforesaid. *Ibid.*

Provided that this Act do not extend to Country Carts, Country or to such as carry Goods half a Mile beyond the Stones. Carts And for the better preserving the said Streets and Sewers, no Person shall breed, feed or keep any Swine, in the No Swine to Houses or Backsides of the pay'd Streets where the Houses be kept in the are contiguous. on pain of forfeiting them to the Poor of City. the Parish, and the Church-wardens, Overseers, Constables, &c. are authoriz'd in the Day, by Warrant from one Justice, to search any place for Swine; and to take them away and sell them, and deliver the Money to the Church-wardens and Overseers of the Poor, to be distributed among the poor of the Parish, as they shall think fit. *Ibid.*

And for the better cleansing the Streets within the City of *London* and the Liberties thereof, the ancient Usage and Custom of the said City in that behalf shall be observ'd. *Ibid.*

And for the better effecting the same, and preventing the throwing or laying any Dust or Rubbish in the Streets, Fines for laying it shall be lawful for the Lord Mayor, or any Aldermaning Rubbish of the said City, on his own View or Knowledge, in the in the Streets. open general Sessions, to present any such Offence, which Presentment shall be good and effectual; and the Sessions are empower'd to assess Fines for such Offences, not exceeding 20 s. for one Offence. which Fines shall be paid to the Chamberlain of the City, for the Use of the said City. *Ibid.*

And

And whereas many frivolous Actions have been brought against Persons employ'd in putting in execution the Act of 23 *Car. 2.* for paving and cleansing the Streets and Sewers of *London*, it is enacted, that if any Person shall be prosecuted for what he shall do in pursuance of that or this present Act, he may plead the general Issue, and give the said Acts, and the special Matter in Evidence; and if the Prosecutor be Nonsuit, or a Verdict be against him, &c. the Defendant shall have treble Costs. *Ibid.*

5 & 6 W. & M.  
c. 10.

Preamble rec-  
iting that the  
City is un-  
able to pay the  
Debts due to  
the Orphans,  
&c.

Therefore for  
paying the In-  
terest of that  
and other  
Debts.

The Lands  
and Revenues  
of the City  
are charg'd  
8000 l. per An-  
num.

Water and A-  
queducts ap-  
propriated to  
the same Use.

2000 l. per An-  
num to be  
rais'd out of

Whereas the Mayor and Commonalty and Citizens of *London*, are answerable for the Monies of the Orphans, paid into the Chamber of the said City, but by some Accidents and publick Calamities, are become indebted to the said Orphans, and their other Creditors, for Principal and Interest, in a much greater Sum than they can pay, without Assistance afforded them. *Stat. 5 & 6 W. & M. c. 10.*

It is enacted, that for raising a perpetual Fund, to pay the yearly Interest of 4 l. for every 100 l. principal Money, and all Interest thereof due to such Orphans, unto the 25th of *December*, 1693. The Interest to be computed at 5 l. per Cent. to the 25th of *December*, 1683. and 3 l. per Cent. from thence to the 25th of *December*, 1693. And also to pay the like yearly Interest of 4 l. per Cent. (to be computed as aforesaid) for all Monies due upon Bond, Bill or Note, liable to pay Interest between the 25th of *December*, 1655, and the said 25th of *December*, 1693. or to any other the Creditors of the said City, on the said 25th of *December*, 1693. from the Chamber of the said City, &c. All and every the Manors, Mesuages, Lands, Markets and Fairs, Revenues and Incomes of the said City, in Possession or Reversion, and the Improvements that may be made thereof, (except the Revenues of *Christ's Hospital*, *St. Bartolomew's*, *Bridewell*, *St. Thomas* and *Bethlem Hospitals*; and other Hospitals of the City, and Borough of *Southwark*, and such as are appropriated for the Repairs of *London-bridge*) are hereby charg'd for ever, from the 24th of *June*, 1694. for raising the clear annual Sum of 8000 l. and are hereby appropriated towards raising such a perpetual Fund to be applied as aforesaid. *Id.*

And all Aqueducts and Right of bringing Water to the City, and the Profits arising therefrom, from the said 24th of *June*, 1694. shall be appropriated and applied towards the Payment of the said Interest Money (other than the Water for the supply of the publick Conduits, Hospitals, Halls and Prisons. *Id.*

And the said Mayor, Commonalty and Citizens, after the said 24th of *June*, 1694, shall yearly raise 2000 l.

by



by a proportionable Assessment on the personal Estates of the personal the Inhabitants of the said City, towards the raising the Estates of the said perpetual Fund; and in default of Payment, the Citizens same shall be levied by Distress, as the said Mayor, Co- for the Uses monalty and Citizens in Common-Council, shall direct. *aforsaid.*

And the said Mayor shall before the 24th of *June 1694.* Lamps. demise and lease out, to Sir *Charles Hare*, Knight and the other Persons concern'd in the Convex Lights, in the said City, for twenty one Years, a Lease or Licence for the sole Use of the publick Lights, reserving the yearly Rent of 600 *l.* which shall be appropriated towards raising the said Fund, and payment of the said Interest Money: After the determination of which Lease, all the Profits arising by the publick Lights, shall be appropriated and apply'd to the Uses *aforsaid.* *Ib.*

And for the further encrease of the said Fund from Duty on *ta-* the 24th of *June, 1694,* every Person bound Apprenticing Appren- to a Freeman of the City, shall pay to the Warden of the tices. Company he is of, 2 *s. 6 d.* to be transmitted to the Chamberlain for the Uses *aforsaid;* which Sums shall be enter'd by the respective Wardens, in Books kept for that Purpose, to be inspected without Fee; and in default of transmitting such Sums to the Chamberlain, the Warden shall forfeit 5 *l.* to be recover'd by the Chamberlain, for the Uses *aforsaid.* *Ib.*

And towards the raising the said Fund, there shall be On admission paid also 5 *s.* by every Person, at his Admission to his to their Free- Freedom. *Ib.* *doms.*

And there shall be impos'd on all Wines imported into Duty on Wine *London,* after the 24th of *June, 1694.* 4 *s. per Tun* above imported. the present Duties, which is hereby appropriated to the raising the said Fund; the Collectors to be appointed by the Mayor and Court of Aldermen; and the Duty to be collected by the Rules contain'd in the 12 *Car. 2. for granting a Subsidy to the King of Tonnage and Poundage, &c.*

And there shall be paid for all Coals imported into the Duty on Port of *London,* or the River *Thames,* within the Liber- Coals. ty of the said City, the Duties following, *viz.*

For Coals and Culm sold by the Chaldron, and im- ported after the 24th of *June, 1694.* 4 *d.* for Meetage; and after the 29th of *Sept. 1700,* 6 *d.* more, over and above the said 4 *d.* and other Duties, for every Chaldron, for 50 Years. *Ib.*

And for Coals sold by the Tun, containing 2000 weight, 6 *d. per Tun,* from the said 29th of *Sept.* for 50 Years, to be paid by the Owner before he shall break Bulk, or have a Meeter assign'd, at such place as the Mayor and Court of Aldermen shall appoint; and the Receiver

Receiver shall give a Receipt *gratis*: And the said 6 *d.* per Chaldron shall be levy'd by the Rules contain'd in the 19 Car. 2. for rebuilding the City of London. And the said Sums of 6 *d.* and 4 *d.* shall be paid into the Chamber, and are appropriated for raising the said Fund: And every Person concerned in the Receipt shall give Security to be approv'd by the Mayor and Aldermen, for the faithful execution of the Trust. *Ib.*

A further  
Fund of 6000  
l.

And after the said Impositions of 6 *d.* per Chaldron and Tun shall determine, all the Revenues of the City of London shall stand charg'd with the further Sum of 6000 l. (over and above the said yearly Sum of 8000 l. and be appropriated in like manner to the same Uses. *Ib.*

Applied to  
the Payment  
of the Or-  
phan's Inte-  
rest, &c.

And all the aforesaid Rents, Profits, Duties and Sums of Money by this Act appointed to be rais'd (reasonable Charges for Officers and other incident Charges deducted) shall be applied for the Payment of the annual Sum of 4 l. for the Interest of every 100 l. of the said respective Debts and all Interest thereof due on the said 25th of Dec. 1693. to the Orphans their Executors, &c. And also for the Payment of the like yearly Interest of 4 l. per Cent. due between the 25th of Dec. 1655, and the 25th of Dec. 1693. upon Bond, Bill, or Note, liable to pay Interest from the said Lord Mayor, Comonalty and Citizens, to any Person whatsoever, or to so much thereof, as the said Monies appointed to be rais'd shall yearly amount unto to pay the said Orphans and other Creditors, in proportion to their respective Interests; the said Payments to be made twice in the Year, *viz.* at St. Thomas and St. John Baptist, the first whereof to be on St. Thomas 1694, and all Orders or Warrants for diverting or misapplying the said Monies, shall be void. *Ib.*

Half yearly  
Payments.

The said In-  
terest of 4 l.  
per Cent. to be  
in full dis-  
charge of the  
said Debts.

And the said Interest Money is declared to be in full Satisfaction and Discharge of the said Debts due from the said Mayor, Commonalty and Citizens, to the said Orphans and Creditors, to the 25th of Dec. 1693. *Ib.*

And the said Orphans and Creditors shall acknowledge Satisfaction in the usual manner, and pay their Fees to the proper Officers not exceeding 13 s 4 d. for every 1000 l.

And Books shall be provided by the Chamberlain, wherein all the Receipts and Disbursements made in pursuance of this Act shall be enter'd, to be inspected without Fee. *Ib.*

Accounts  
audited.

And the Receipts shall be audited yearly by one of the Auditors of the Imprest. between Michaelmas and St. Thomas, which Accounts shall be sign'd by the Auditor, and allow'd by the Mayor and Court of Aldermen; and there shall be paid to the Auditor 20 s. for every 1000 l. the said Accounts shall amount unto. *Ib.* And

And if any Officer shall direct or misapply any of the Misapplicati-  
said Sums, he shall forfeit treble the value to any of the on.  
said Creditors who shall sue for the same. *Ib.*

And the Chamberlain and Common Serjeant shall, up- Notes to be  
on request, give to every Orphan and Creditor a Note of given the Or-  
the Principal and Interest due to him, who may assign orphans of the  
transfer his Interest therein, or in any part thereof, which Money due  
Assignment shall be register'd in a Book to be kept by the to them.  
Mayor and Aldermen: And the said Note being deliver'd  
to the Person appointed by the Mayor and Aldermen for  
that purpose, he shall give his Note to the Assignee of the  
said Debt, who shall be entituled to the Benefit thereof;  
and such Assignee may assign again in like manner, and so  
*toties quoties*; and it shall not be in the power of the Par-  
ty assigning, to make void, release, or discharge the Which shall  
same. *Ib.* be assignable.

And no Person shall be compell'd by virtue of any Cu- No Person  
stom of the said City, to pay into the Chamber any Sum compellable  
of Money or Personal Estate belonging to an Orphan of to pay Or-  
any Freeman. *Ib.* phans Money

If the City, or any of their Officers, under colour of into the  
Authority from them, shall misapply any of the Sums Chamber for  
hereby appropriated, the Corporation shall be answerable the future.  
for them in an Action brought by an Orphan or Credi- City liable for  
tor; and the Sum so recover'd shall be applied to the Misapplicati-  
Uses aforesaid, and Costs given to the Plaintiff or Profe- ons.  
cutor. *Ib.*

And all Amerciaments, Fines, Issues, or Distresses  
against the said Corporation, on Account of such Suit or  
Action brought, shall be applied to the Uses aforesaid,  
and shall not be pardon'd or discharg'd by any Letters of  
Signet; or by the Great or Privy Seal. *Ib.*

Provided, that when Application shall be made to the City impow-  
Mayor and Court of Aldermen on the Behalf of any Or- er'd to pay off  
phan of the City, by the Executors or Administrators of Orphans who  
his Father, to pay into the Chamber any Sum of Money are above 21  
belonging to such Orphan, to have the Benefit of the Years of  
Provision hereby made, the said Court are hereby im- Age; and to  
power'd and directed to order the Chamberlain to pay receive such  
off the like Sum to any person entituled to the said yearly Orphans Mo-  
Payments, not being Orphans under the Age of twenty ney as Execu-  
one Years, giving three Months Notice to the person tors shall  
to be paid off; and on payment or a Tender of such Sum, lodge with  
at the Chamberlain's Office in *Guildball* at the end of the them.  
said three Months, the annual Sum payable to such per-  
son shall cease, and the same shall become payable to the  
Orphan who has paid in his Money for the same, and shall  
be registred and assignable as aforesaid. Nevertheless



the Money tendred shall be paid to such person on demand and giving a Discharge for the same: It being declared that the Provision hereby made, shall be a perpetual Fund for the Benefit of the Orphans of the said City successively. *It.*

Orphans who had assign'd their Debts, enabled to redeem the same.

And it is enacted, that such of the said Orphans as before the said 25th of *December* had assigned their said Debts, or covenanted so to do, shall and may redeem the same on payment of the Consideration Money receiv'd, with the Charges and Interest of the same, from the time of the Receipt thereof, after the rate of 8*l. per Cent. per Ann.* And upon tender of the same, all such Assignments and Covenants shall be void, provided such Redemption be made within three Years after the present Session of Parliament. *It.*

Securities given to Solicitors by Orphans to help them to their Debts, void.

And all Obligations and Agreements enter'd into by any of the said Orphans, with any Persons pretending to solicit the payment of such Orphans Debts, (for the payment of large Portions of their said Debts to the said Solicitors when recover'd) shall be void, and the Court of Aldermen are authoriz'd out of the Revenue settled by this Act, to allow and pay to such Agents and Solicitors, what they shall judge reasonable; and any Agent or Solicitor demanding or receiving more, shall forfeit treble the Value and Costs to him that will sue for the same. *It.*

Saving for the Proprietors of the *New River* Water and *Tork Buildings*.

Provided that this Act shall not extend to the Profits arising by the *New River* Water, nor be construed to hinder the Governor and Undertakers for raising the *Thames* Water in *Tork Buildings*, from drawing Water out of the *Thames*, or laying Pipes, according to an Act in that Behalf made. *It.*

*Shadwell*.

Provided that the said Company, nor the said Mayor and Commonalty, shall disturb or obstruct each other in laying or repairing their Pipes, or any ways damaging each others Pipes or Branches. *It.*

A saving also for the Company of the Water Works in *Shadwell*, that they shall enjoy the Rights according to an Act of this present Session. *It.*

Proprietors of Lamps.

A saving also of the Right of Mr. *Thomas Morris*, to the Water Works at *London Bridge*. *It.*

A saving also of the Right of Mr. *Samuel Hutchinson*, on paying to the Partners of the Convex Lamps his Share and Proportion of Stock, so that he shall enjoy the same Benefit and Advantage thereby, as the other Partners. *It.*

Persons sued for what they shall do in pursuance of this Act, may plead the general Issue, and give this Act and the special Matter in Evidence, and if the Prosecutor be cast, discontinue, &c. he shall pay Costs *It.*

This

This Act shall be reputed a general Act.

And because the Residue of the Revenue of the City 2000*l.* per will not be sufficient to defray the necessary Expences of *Annum* applied the Government thereof, from the 29th of *September* last, for 7 Years to for seven Years, it shall be lawful for the Court of Alder- the Expences men to apply 2000*l.* yearly for that use, out of the Mo- of the Go- nies hereby appointed for the use of the said Orphans and vernment. Creditors. *Ib.*

Provided, that if there shall not remain Money enough But to be re- to satisfy all the said Orphans and Creditors after the paid, rate of 4*l.* per Cent. during the said whole Term of seven Years, then the City shall pay within seven Years after the Expiration of the said Term, to the Chamberlain, the full Sum of 14000*l.* or so much as they shall have made use of by 2000*l.* yearly, or such less yearly Sum as shall be proportionable to what they have made use of, till the Deficiency shall be made good; and the whole Revenue of the City, except of the Hospitals, and what is appropriated for the Repair of *London Bridge*, are charg'd, and shall remain as a Security for the Repayment of the same. *Ib.*

Whereas in an Act of 2 *W. & M. c. 8.* for paving and 8 & 9 *W. 3.* cleansing the Streets of *London* and *Westminster*, &c. there *c. 37.* are several Omissions which hinder the due Execution of Citizens to the said Act, it is hereby enacted, that after the 10th of sweep<sup>r</sup> their *April 1697.* every person inhabiting within the Parishes Doors every of *Middlesex* and *Westminster*, the Borough of *Southwark*, the *Wednesday* and Weekly Bills, and the Town of *Kensington*, shall on *Wednesday* and *Saturday* every Week, between six and nine in the Forenoon, cause to be swept and cleans'd, all the Streets, Lanes, Alleys, and publick Places, before their respective Houses, Buildings, and Walls, and the Buildings and Walls of Churches and other publick Places, that the Dirt may be heap'd ready for the Scavenger, on pain of ten Shillings, to be recover'd as other Penalties by the said recited Act are to be recover'd. *Stat. 8 & 9 W. 3. c. 37.*

And if any Conviction shall be upon this or the said recited Act, by the View or Knowledge of one or more Justices of the Peace, then half the Penalty shall be to the Poor, and the other (if for default of Pavement) for repairing, paving and cleansing the said Streets and Places, to be paid to the Scavenger for that use, or otherwise to the Relief of the Poor, as by the said Act is directed. *Ib.*

And where any place within the Weekly Bills shall by the Justices be order'd to be pav'd, and the other side, or part of the said Street or place be out of the Weekly Bills, the said Justices are empower'd to cause the other side, or

part, to be also pay'd by the respective Inhabitants next adjoining, under the same Pains and in the same Manner, as if the same had been within the Weekly Bills. *Ib.*

Swine.

And the Clause in the said recited Act against breeding, feeding, or keeping of Swine, shall be effectually put in execution against all Persons who shall breed, feed, or keep Swine within any part of the Houses or Backsides of the pay'd Streets or Lanes of the said Cities, Borough, or Parishes, so far as the contiguous Buildings extend, or within fifty Yards thereof. *Ibid.*

Provision for  
particular  
Vills.

And where there is any Liberty, Precinct, or Vill, in any Parish within the Weekly Bills, which uses to repair their own Highways, and also perform Days works in other Highways, if such Vills, &c. shall be unable to repair their own Highways, and also to perform the Days works requir'd to the other Highways within their Parish, it shall be lawful for the Justices of Peace at their special Sessions. to be held every four Months, to appoint such a proportion of the Days works, as they shall think fit, to be employ'd by the Inhabitants of such Precinct or Vill in the repairing of the Highways thereof; and then only the residue of the Days works as such Inhabitants are liable to do, shall be employ'd in repairing the other Highways within their Parish. *Ib.*

Tottenham.

The ancient Highway leading from Tottenham Court, near St. Giles's Pound, towards Tyburn, shall be repair'd, pay'd, and maintain'd by such Persons as have heretofore used to repair, pave, or amend the same. *Ibid.*

London Bridge.

Sir Robert Clayton, Sir William Ashurst, &c. are hereby empower'd to treat with the Owners and Occupiers of certain Tenements, standing upon or near the South end of London-Bridge; and upon payment of such Sums of Money as shall be agreed on, to cause the said Tenements to be remov'd, rebuilt, or pull'd down, in order to open and enlarge the Passage there. which Agreements shall be as effectual as if the said Tenements had been sold by Deed, Feoffment, Bargain and Sale, or other Assurance in the Law; and done by Fine and Recovery, or any other Assurance whatsoever. *Ibid.*

And if there be any Persons, Bodies Corporate or Collegiate, who shall refuse to treat and agree as aforesaid, or through any Disability by Nonage, Coverture, &c. cannot, then the said Commissioners shall issue Warrants to the Sheriffs of London and Surrey respectively. to impanel and return a Jury before the said Commissioners, or any eleven of them, who shall upon their Oaths enquire and assess such Damage and Recompence as they shall judge fit to be awarded to the Owners and Occupiers  
of



of any such Houses, as well for their loss of Trade, as for their respective Interests and Estates in the said Houses which the said Commissioners shall judge fit to be pull'd down. *Ibid.*

And such Verdict and Judgment of the Commissioners thereupon, and payment or tender of the Money so awarded and adjudg'd, shall be binding to all Parties, and be a sufficient Authority for removing or pulling down the said Houses, or any part of them. *Ibid.*

Provided no Person be a Commissioner until he have taken an Oath in the Court of Chancery for the due execution of the Trust repos'd in him. *Ibid.*

Whereas by an Act of 1 Jac. 1. c. 19. for the well 6 Ann. c. 16, garbling of Spices, several powers are therein given to The Act for the Garbler which have been found prejudicial to Trade, garbling Spices repeal'd, the said Act is hereby repeal'd. Stat. 6 Ann. c. 16.

Provided that it shall be lawful for the Lord Mayor, Court of Aldermen, and Common Council, to appoint a fit Person to be Garbler within the City of London and the Liberties thereof, who at the request of the Owner of any Spices, Drugs, or other garbleable Wares or Merchandizes, and not otherwise, shall garble the same, and receive for his Pains such Reward as the Lord Mayor, &c. shall appoint. *Ibid.*

And for a Recompence to the City, &c. to whom the Brokers to be Profits of the said Office of Garbler belong'd; it is sur- admitted by ther enacted, That all Brokers within the said City and the Court of Liberties shall be admitted to that Office by the Court Aldermen, of Mayor and Aldermen, under such Restrictions as that and pay 40 s, Court shall think fit; and shall pay upon their Admission per Annum to 40 s. and afterwards yearly at Michaelmas the like Sum of the City, 40 s. *Ibid.*

And if any Person shall act as a Broker, or employ On pain of another to act as such, not being admitted as aforesaid, forfeiting 25 l, he shall forfeit to the said City the Sum of five and twenty Pounds. to be recover'd by Action of Debt in any Court of Record by the Chamberlain of the said City, *Ibid.*

Whereas by a Clause in the 19 Car. 2. c. 3. entituled 7 Ann. c. 9. an Act for rebuilding the City of London, it is provided, Recital that that the Number and Places for all Common Sewers, the Sewers Vaults, and Drains, and the Manner of paving and and Pave- pitching the Streets within the said City and Liberties, ments are un- shall be under the direction of such Persons as the Mayor, der the direc- Aldermen, and Common Council should appoint, which tion of the Clause by 22 & 23 Car. 2. was made perpetual. Lord Mayor,

And whereas some Doubts have arisen whether the Per- &c. sons so authoriz'd have the like Powers vested in them, as Commissio- the ners appoint-

ed by the  
Lord Mayor,  
&c. to have  
the same  
Powers as  
other Com-  
missioners of  
Sewers.

the Commissioners of Sewers in other Parts of *England* have, it is hereby enacted, That the said Persons so authoriz'd and appointed by the Lord Mayor, Aldermen, and Common Council for the Purposes in the said recited Acts mention'd, shall and may exercise and put in practice all and every the Powers and Authorities vested in any Commissioners of Sewers in any other County or Place in *England*, by virtue of the Laws and Statutes of this Realm, or of any Commissioners granted pursuant to the same; and shall be deem'd Commissioners of Sewers within the Limits aforesaid, subject only to the limitations and restrictions of the said Act of 22 & 23 *Car. 2. Stat. 7 A. c. 9.*

Collectors of  
Sums assess'd,  
not account-  
ing or paying  
in Monies col-  
lected, to for-  
feit 10*l.*

And if any Person appointed to be Collector of the Rates and Duties assess'd according to the said last mention'd Statute, shall neglect or refuse, upon Notice, to appear before the said Commissioners, and give a just Account upon Oath of all Monies collected by him, or shall neglect to collect such Sums as shall be specified in a Roll deliver'd to him, or to pay such Monies collected, as shall appear to be in his Hands, into the Chamber of *London*, according to the directions of the said Act, he shall forfeit for every such Offence a Sum not exceeding ten Pounds, to be imposed by the said Commissioners, besides such Monies as he shall be chargeable with; the said Penalties to be recover'd by Distress and Sale, by Warrant from the said Commissioners, or any seven of them, and shall be applied to the repairing and amending the said Sewers, &c. *Ibid.*

Conservator-  
ship of *Thames*  
saved to the  
Lord Mayor.

Provided that nothing in this Act shall extend to the Conservatorship of the River *Thames*, or to give any Jurisdiction to the said Commissioners to intermeddle therein; or shall affect the Power or Authority of the Lord Mayor concerning the same. *Ibid.*

And if any Person shall be prosecuted for what he shall do in pursuance of this or the said recited Acts, he may plead the general Issue, and give the said Acts and the special Matter in Evidence; and if the Plaintiff be Non-suit, Discontinue, &c. the Defendant shall have treble Costs, *Ibid.*

## R E A D I N G S.

Court of Or-  
phans in *Lon-*  
*don*,

In *London* there hath been a Court of Orphans Time out of Mind; and there hath been a Custom that if any Freeman or Freewoman dies, leaving Orphans under Age unmarried, that they

they have had the custody of their Body and Goods, and that the Executors and Administrators have us'd to exhibit true Inventories before them; and if there appear'd to be any Debt, to be bound to the Chamberlain, to the use of the Orphans, in a reasonable Sum, to make a good Account thereof upon Oath after they have receiv'd them; and if they refus'd, to commit them 'till they were bound: This is a good and reasonable Custom; and if the Ecclesiastical Court will compel them to make an Account there against this Custom, a Prohibition lies. *Hobart's Rep. Case 313. Zuche's Case, 2 Danv. 312.*

By this Custom if any one, without the consent of the Court of Aldermen, marry such Orphan under the Age of twenty one, though out of the City, they may Fine and Imprison him for Non-pament thereof; and if the Custom should not extend to Marriages out of the City, their Power would be but in vain. *Hill. 23 & 24 Car. 2. between the King and Harwood, 2 Lev. 32.*

If *A.* and *B.* are bound as Sureties for and with *C.* to *D.* and *D.* recovers against *A.* in *London*, and has Execution against him, *A.* may there sue *B.* for Contribution, *ut uterque eorum oneretur pro rata*, according to the Custom of *London*, *Pasch. 26 Eliz. between Affley and Johnson, 1 Leon. 166.* Such Action being remov'd in *B. R.* by Writ of Priviledge was remanded, because otherwise the Plaintiff would be without remedy; for by the Course of the Common Law no Action lies.

If a Woman declare *pro rationabili parte bonorum* of her Husband in the Court of the Mayor and Aldermen of *London*, and alledges the Custom, that when Citizens and Freemen of *London* die, their Goods and Chattels, above Debts and necessary Funeral Expences, ought to be divided into three Parts, and that the Wife of the Testator ought to have the one Part, the Executors another to discharge Legacies and dispose of at their Discretion, and the Children of the Testator,



stator, Male and Female, which are not sufficiently provided for in the Life of the Father, the other third Part; and that the Suit for the same ought to be in that Court, &c. being remov'd in *B. R.* it may be there proceeded upon, *Hill. 5 Car. Cason's Case, Hetl. 158. Per Cur.* and said there were several Precedents to this purpose. And it was said by *Richardson*, Chief Justice, that the Plaintiff might have declar'd without alleging the Custom, because it was well known there; but that it is otherways where an Action upon the Custom is brought in a Place where the Custom extends not.

Debts attach-  
ed in the  
Hands of  
others.

If by the Custom a Debt be attach'd in the Hands of *B. B.* may plead it in Bar against his Debtee. *21 Ed. 4. 67.*

But when such an Attachment is pleaded, the Plaintiff may traverse the Cause thereof, *scil.* that the Defendant was not indebted to him who attached it, *Mich. 21 Jac. B. R. by Coke*, and by him there cited *P. 40 Eliz. B. R. Pain's Case* adjudg'd. *Old Entries*, Debt in Attachment 1. fol. 157. C. But Note this is upon the Custom of *London* within the Year and Day.

If *A.* be indebted to *B.* and *J. S.* a Stranger takes by force certain Goods of *A.* as a Trespasser, *B.* cannot by the Custom attach these Goods in the Hands of *J. S.* for the Debt of *A.* because the Property is out of *A.* at the time, and only a Right in him, *Trin. 4 Jac. B. R.* between *Stamere* and *Amony* adjudg'd.

Legacy can't  
be attach'd.

A Legacy cannot be attach'd in the Hands of an Executor by Foreign Attachment, because it is uncertain whether after Debts paid the Executor hath Affets to pay it, *Mich. 14 Jac. B. R.* between *Page* and *Dawketon* and *Davis*, *per Cur.* resolv'd, and a Consultation granted accordingly, after a Prohibition to the Ecclesiastical Court where the Suit was for a Legacy, *Mich. 14 Jac. B. R.* between *Scurra* and *Mercial*, *per Cur.* for that a Legacy is not demandable nor suable at Common Law. *2 Danv. 314.*

If *A.* is indebted to *B.* who is indebted to *C.* and *B.* assigns the Debt of *A.* to *C.* in satisfaction of his Debt, now the Debt due from *A.* is become the Right and Property of *C.* and *B.* hath nothing but in Trust for *C.* and therefore it ought not to be attach'd for any Debt of *B.* and upon the special Matter shewed, the Lord Mayor ought to give relief, *Mich.* 34 *Car.* 2. between *Lewis* and *Wallis*, 2 *Jon.* 222, 223. *per Cur.*

If a Man recovers Debt or Damages in *B. R.* this Debt cannot after be attach'd in *London*; for the Inferiour Court cannot attach a Debt in a superiour Court, *P.* 32 *Eliz.* *B. R.* between *Kerry* and *Boyer*, *per Cur.* and *Trin.* 32 *El.* after adjudg'd; and there is cited Sir *John Parrets's* Case to be adjudg'd accordingly.

Debts recovered in the Courts at *Westminster* cannot be attach'd.

If *A.* is indebted to *B.* and *C.* is indebted to *A.* and *B.* brings Debt in *B. R.* against *A.* pending this Action, *B.* may affirm a Plaint in *London* against *A.* for the same Debt, &c. and attach the Debt in the Hands of *C.* for though a Debt in *London*, for which there is a Suit depending in *B. R.* cannot be attach'd, yet he that hath brought an Action in *B. R.* may notwithstanding, according to Custom, attach the Debt of the Party; for the Debt in question in *B. R.* is not touched by this Attachment, *Mich.* 39 & 40 *Eliz.* between *Lewkner* and *Huntly*, *Cro. Eliz.* 593. adjudg'd 712, 713. resolv'd also upon a Writ of Error, though the Judgment was reversed for another Reason.

A Debt may be attach'd by the Custom before it is due; but before it is due Judgment cannot be given upon this Attachment, that he shall have or retain it in satisfaction of his Debt demanded before it is due; for thereby there should be an Execution of this Debt attach'd before it becomes due, which cannot be; for by the Judgment it is put in execution perfectly, *Trin.* 14 *Car.* *B. R.* between *Pierse* and *Calcot*, adjudg'd upon a Demurer, *Intratur Mich.* 13 *Car.* *Rot.* 473. But, Note, It was objected on the other Side, that this was a good Custom, because the Judgment is not that

that the Debt attach'd shall be paid presently, but only that he that is Plaintiff shall have it in satisfaction of his Debt presently, but to be paid when it becomes due. 2 *Danv.* 316.

One may attach a Debt in his own Hands.

If *A.* recovers Debt against *B.* in *London*, *B.* may attach this Debt in his own Hands for so much due to him, *Pasch.* 32 *Eliz. B. R.* between *Kerry* and *Bowyer*, admitted *Trin.* 32 *Eliz. B. R.* same Case, admitted *Mich.* 11 *Jac. B. R.* between *Lopas* and *Holman*.

Manner of proceeding in Attachments.

The Custom of *London* is, that if any Plaintiff be affirmed in *London* before, &c. against any Man, and it is return'd *nihil*, if the Plaintiff will surmise that any Man within the City is Debtor to the Defendant in any Sum, he shall have Garnishment against him, for him to come in to answer if he be indebted in the Form the other hath alledged; and if he comes and does not deny it, then this Debt shall be attach'd in his Hands, &c. So, Note, that the Plaintiff ought to surmise that the other Man who is indebted to the Defendant is within the City, 22 *E. 4.* 30. *per Starkey* the Recorder of *London*, the Custom so certified.

One may be arrested before Plaintiff enter'd with the Sheriff.

*Co. 9. Machally* 68. *b.* Resolv'd by all the Justices and Barons, that after the Plaintiff enter'd in the Book of the Porter of *London*, and before the Entry thereof in the Court before the Sheriff, the Defendant may be arrested by the Custom of *London*.

If in Debt upon an Obligation of 100*l.* condition'd for the Payment of 50*l.* at a Day, the Defendant pleads that before the Day of Payment of the 50*l.* it was attach'd in his Hands by a Creditor of the Plaintiff, &c. and that after the Day upon a *Scire facias* against him according to Custom, he paid it; this is a good Bar of the whole, because the Attachment being made before the Day of Payment it became a Debt to the Creditor, and the Obligee could take no advantage of a Breach of the Condition afterwards, *Pasch.* 19 *Car. 2.* between *Robins* and *Standard*. 1 *Syd.* 327. adjudg'd.

But



But if the Attachment had been of 20*l.* only, it might have been pleaded in Bar of so much. *Pasch.* 16 *Car.* 2. 1 *Sid.* 327. *per Curiam.*

There is a Custom in *London*, that when a Chaplain keeps any Woman in his Chamber suspiciously, a Man may come to his Chamber, with the Beadle of the Ward, and enter the Chamber and search. 2 *H.* 4. 12. *b.*

It is no good Custom in *London*, that if any Person dies within any Parish in *London*, and is carried out of the Parish to be buried in any other Parish, if he is buried in the Chancel, or otherways, he shall pay so much to the Parson of the Parish where he died, as he should have paid if he had been buried there in the Chancel, or otherways, as where he was buried; for this Custom is against Reason, that he that is not any Parishioner, but passing through the Parish lies at an Inn for a Night, should be forc'd to be buried there, or to pay as if he had been buried there. *Hob. Rep.* 175. between *Topsal* and *Ferrers*.

It is a good Custom in *London*, that if a Feme Covert trades by herself at a Trade with which her Husband does not intermeddle, and thereby contracts Debts, that she shall be sued for them, and her Husband nam'd only for conformity; and that if Judgment be given against them, that she only shall be taken in Executionn. *Pasch.* 3 *Car.* 1. between *Langham* and the Wife of *Bewett*, *Cro. Car.* 49.

By the Custom of *London*, a Tenant at Will, Warning to under the yearly Rent of 40*s.* shall not be turn'd out without a Quarters Warning; and such Tenant paying above 40*s.* yearly Rent, shall not be turned out without half a Years Warning, *Mich.* 1657. between *Dethich* and *Stupders*. 2 *Sid.* 20.

If a Freeman of *London* has no Wife living, but has Children, the half of his Personal Estate belongs to his Children, and the other half the Freeman may dispose of; so if the Freeman has a Wife and no Children, half of his Personal Estate belongs to his Wife, and the other half he may dispose of; but if a Freeman hath a Wife and

Burials of  
Strangers.

Feme Covert  
may trade  
seperately.

be given to  
the Tenant at  
Will in Lon-  
don.

Division of a  
Freeman's  
Estate.

and Children, one third Part belongs to his Wife, and another third Part to the Children, and the Freeman may dispose of the other third Part: And if such Freeman dies Intestate, the Custom affects only two Thirds, and the remaining Third is subject to the Statute of Distributions, and so dividing the whole into Ninths, four Ninths belong to the Wife, and five Ninths belong to the Children.

Grandchild  
no share of  
the Dividend.

If a Freeman of *London* has two Sons, and the eldest Son dies having a Son, and then the Freeman dies, the Grandchild, though in Law a Representative of the Son who never was advanced, has no part by the Custom; for the Custom of *London* extends only to the Children, and not to the Grandchildren, *per Northey*. And so it has been certified by the Recorder into Chancery.

Where but  
one Child.

If a Freeman of *London* has but one Child, and he has receiv'd some Portion from his Father, and the Father dies leaving this Child and a Wife, the Child shall have his full Orphans Part, without any regard to what he has already receiv'd; for that advancement in part is only to be brought into Hotchpot with Children, and not with others, *per Sir Edward Northy*.

Hotchpot.

If a Freeman of *London* had advanced any of his Children with a Portion, yet if it appears what that Portion was by any Writing under the Father's Hand, or by the Father's Will, or his Marriage Settlement; and by the said Will or Settlement it is said, that the said Portion is or was in full of his Child's Part by the Custom, yet this Child shall come in for the customary part of the rest of the Father's Personal Estate bringing the Portion already received into Hotchpot; otherwise it is, if it does not appear under the Father's Hand what the Advancement was. *Custom of London concerning Freemens Estates.* 2 *Salk.* 426, 427.

Wife has her  
share of a  
Lease volun-  
tarily assign'd.

The Father, a Freeman of *London*, being posses'd of a Term by Deed, assign'd it to his Son as a Provision, and died; the Mother sued in Chancery for her customary Part, and now upon Issue

at

at a Tryal, before *Hale*, after the Term, whether a Wife shall be bound by this Assignment of the Father so as to be barr'd of her customary Part; 'twas prov'd, and found by the Jury that she is not barr'd thereby, it being voluntary, but has still a Title to her customary Part of the Term: The same Law of Goods. City against City, 2 *Lev.* 130.

If a Freeman shall settle or make over all, or Freeman can't any part of his personal Estate, with a design to defeat his defraud either his Wife or Children of their full Wife and Shares or Parts, they may likewise be reliev'd. Children of their Share.

The Mortgage of an Inheritance to a Freeman hath been held to be part of his Personal Estate, Mortgage in Fee deem'd and to be divided according to the Custom. Personal Estate.

*Thornborough v. Baker*, 1 *Chan. Cases* 285. But where a Freeman of *London* purchaseth a Lease to attend the Inheritance not Lease for Years of some Houses in *London* for 600*l.* and afterwards for 100*l.* more bought the Inheritance, and takes the Conveyance in another's Name, in Trust for him and his Heirs, and dies, the Question was whether this Lease be within the Custom. Custom. within the Custom. of *London* to be devised as a Chattel; for it was agreed by all, that a Lease for Years assign'd over to attend the Inheritance is not within it; and the Chancellors Opinion was, that neither can this Lease, for it is knit to the Inheritance. 2 *Chan. Cases* 260.

It was agreed in Chancery by the Lord Chancellor *Comper*, in *Trin. Term* 1715. that the Widow and Orphans of a Freeman of *London*, are in the nature of Creditors for two Thirds of the Personal Estate he shall dye posses'd of; and that if any Loss happen by the insolvency of his Executors, such Loss ought to be born by the Legatees of a Freeman entirely out of his Deaths Part, so that the Widow and Orphans may have two full Thirds of the Freeman's Estate, as if no such Loss had been. Widow and Orphans in the Case of Creditors.



## Longitude.

12 Ann. Sess. 2.  
c. 15.

Reward for  
discovery of  
the Longi-  
tude.

**B**Y this Act the first discoverer of the Longitude is entitled to a Reward of 10000 *l.* if it determine the same to one Degree or sixty Geographical Miles; and to 15000 *l.* if it determines it to two Thirds of that Distance; and to 20000 *l.* if it determine it to half a Degree; to be paid by the Treasurer of the Navy. Stat. 12 Ann. Sess. 2. c. 15.

## Lotteries.

10 & 11 W. 3.  
c. 17. Persons  
setting up  
Lotteries to  
forfeit 500 *l.*

**N**O Person shall publicly or privately exercise, keep open, shew, or expose to be plaid at, drawn at, or shall draw, play, or throw at any Lottery, either by Dice, Lots, Cards, Balls, or any other Numbers and Figures, or any other Way whatsoever; and every Person that shall exercise, expose, open, or shew, to be plaid, thrown, or drawn, at any Lottery, Play, or Device, shall for every Offence forfeit 500 *l.* to be recover'd by Bill, Action, &c. in the Courts at Westminster, one Third to the King, another Third to the Poor where the Offence is committed, and the other Third, with double Costs, to the Informer, and such Offenders shall also be prosecuted as common Rogues according to the Statute. Stat. 10 & 11 W. 3. c. 17.

And prosecuted as common Rogues.  
Person drawing at such Lottery to forfeit 20 *l.*  
Royal Oak.

And every Person who shall play, throw, or draw at any Lottery, Play, or Device, shall forfeit 20 *l.* for every Offence; to be recover'd and disposed of as aforesaid. *Ib.*

Provided that this Act shall not extend to the suppressing the Royal Oak Lottery, for the remainder only of the Term now granted by Letters Patents. *Ibid.*

9 Ann. c. 6.  
Penalty of  
100 *l.* for  
giving Notice of any  
Lottery set  
up.

The said Act of 10 W. 3. c. 17. shall be put in execution: And for the better suppressing such unlawful Lotteries, it is enacted, That every Person who shall set up, or by writing, or printing, publish the setting up any such unlawful Lottery, to be drawn, shall forfeit 100 *l.* to be recover'd by Information, Bill, Complaint, or Action at Law, in any of the Courts at Westminster; one Third to go to the Crown, another to the Poor of the Parish, and

and the other Third to the Informer, with full Costs.

*Stat. 9 Ann. c. 6.*

And every Person who shall set up any Office or Place Persons set-  
for making Assurance on Marriages, Births, Christenings, ting up Offi-  
or Service, shall forfeit 500 l. ces of Assu-  
rance, to for-  
feit 500 l.

## Marriage.

**A**LL such Marriages as are contracted between law- 32 H. 8. c. 3.  
ful Persons, (and all are hereby declar'd to be law-Marriages not  
ful Persons who are not prohibited to marry by God's prohibited by  
Law) being solemniz'd in the Face of the Church, and Gods Law  
consummated, are declar'd to be valid, notwithstanding declar'd valid,  
any Precontract not consummated. *Stat. 32 H. 8. c. 38.* and that not-

So much of the Statute of 32 H. 8. c. 38. as makes a withstanding  
Marriage indissoluble which is solemniz'd in the Face of a Precontract.  
the Church, and consummated with Bodily Knowledge 2 & 3 Ed. 6.  
and Fruit of Children, notwithstanding a Precontract, is c. 23. Part of  
hereby repeal'd: And it is declar'd, That where any the said Act  
Contract of Marriage is pretended. it shall be lawful for confirming  
the Ecclesiastical Judge to hear and determine the said Marriages  
Cause. and to give Sentence for Matrimony or the So- where there is  
lemnization thereof, or for Cohabitation, &c. and to in- a Precontract  
dict such Pains upon the Disobedient as he might have repeal'd.  
done before the said Statute; but all other Clauses and  
Things mention'd in the said Act of 32 H. 8. c. 38. are  
hereby confirm'd. *Stat. 2 & 3 Ed. 6. c. 23.*

The abovesaid Statutes of 32 H. 8. c. 38. and 2 & 3 1 & 2 P. & M.  
Ed. 6. c. 23. are repeal'd. *Stat. 1 & 2 P. & M. c. 8.* c. 8. Repeal'd.

So much of 32 H. 8. c. 38. as was confirm'd by the said 1 Eliz. c. 1.  
Statute of 2 Ed. 6. c. 23. is hereby revived. *Stat. 1 Eliz. Reviv'd.*  
c. 1.

All Marriages solemniz'd by Justices of Peace, or re- 12 Car. 2. c. 33.  
puted Justices of Peace, during the Usurpation, are de- Marriages by  
clar'd to be valid, and to be of the same Force and Effect Laymen con-  
as if such Marriages had been solemniz'd according to the firm'd.  
Rites and Ceremonies of the Church of England. *Stat.*  
13 Car. 2. c. 33.

The last mentioned Act for confirming Marriages so- 13 Car. 2. c. 11.  
lemniz'd by Justices of Peace is hereby confirmed. *Stat.*  
13 Car. 2. c. 11.

## READINGS.

Marriage of  
Divine Insti-  
tution.

Marriage, or the Conjunction of one Man and one Woman in a constant Society and Agreement to live together, ('till the Contract is dissolv'd by Death or Breach of Faith, or some notorious Misbehaviour, destructive of the Ends for which it was intended) was evidently the Institution of Heaven, if we give any Credit to the Scriptures.

Mutual Con-  
sent makes  
the Marriage.

And nothing more is requisite to a compleat Marriage, even by the Laws of *England*, than a full, free, and mutual Consent between Parties not disabled to enter into that State by their near Relation to each other, Infancy, Precontract, or Impotency.

The solemn-  
izing it to be  
determin'd by  
the Laws of  
the Country.  
And the Pri-  
viledges at-  
tending it.  
But the State  
cannot dis-  
solve a Mar-  
riage solemn-  
iz'd in other  
Manner.

As to the Solemnization of Marriage, this is evidently a Civil Rite, and is regulated by the Laws and Customs of the Nation where we reside; and every State allows such Priviledges and Advantages to the Parties as it deems expedient; they may and do also deny any legal Advantages to those who refuse to solemnize their Marriage in the Manner the State requires; but they cannot dissolve a Marriage celebrated in another Manner than the Laws of the Country direct, for Marriage, as has been observ'd, is of Divine Institution, and nothing but a full, free, and mutual Consent of the Parties is necessary to compleat it; and those who are so conjoined, no Powers can, *without just Cause*, put asunder.

Mutual Con-  
sent is Mar-  
riage accord-  
ing to the  
Laws of *Eng-  
land*.  
And the Issue  
of Parties Pre-  
contracted to  
any other, are  
Bastards.

And by the Laws of *England*, where a mutual Contract in Words of present Time, can be prov'd, the Ecclesiastical Courts will compel the Parties to solemnize their Marriage, although either, or both of the Parties are married elsewhere, and have celebrated the later Marriage in the Face of the Church, and Children have been the Fruits of it: And the Children of such later Marriages are deem'd Bastards in our Law.

As



As to the Nature of these Contracts, it is held that if only one of the Parties promise, it is not binding; nor is the silent Party presum'd to consent, unless in some Instances; as where the Father and Mother Contract for the Child, there the Child being present and hearing the Contract, Silence is taken for Consent; but it is otherwise if any other Person but the Parents answer for the Party.

Promise on one Side only not binding.

Where Silence is taken for Consent.

It is not material in what Form of Words Marriage Contracts are made, or whether by Writings, Signs, or Tokens, so as the Consent be made apparent; but there must be no Violence, Threats, or Fraud us'd, for if there be, the Contract will be void: Also if either Party be an Infant under seven Years of Age, of Kindred within the *Levitical* Degrees, or contracted to another before, in any of these Cases, Espousals, or Contracts of present or future Marriage, are void. And where the Parties contracting are above seven Years of Age, and under the Ages of fourteen and twelve, there the Man at his Age of fourteen, and the Woman at the Age of twelve, may disagree and marry elsewhere: Indeed the Marriages of young Princes, made by the State in their Behalf, at any Age, are held good, this being look'd upon for the common Benefit and Peace of Mankind; but there have been many of these Contracts broken through: *Henry 8.* married his Daughter the Princess *Mary* several times in her Infancy, and none of the Contracts were observ'd.

Any Form of Words sufficient.

Violence or Fraud avoid the Contract. So do Infancy, Kindred, and Precontracts.

Ages of Consent.

To proceed notwithstanding, it is generally held that the Words *I will take thee for my Wife*, or *I will marry thee*, are only a Promise of future Marriage, yet great regard is had to the Apprehension and Intention of the Parties; for as it is the Consent only which makes the Marriage; and the Vulgar frequently confound the Tenses, and take the future for the present; where it plainly appears they meant present Marriage, it shall be so esteem'd; and where the Contract is by way of Interrogatories, and it is demanded of the

What Words amount to present Marriage.

Man, if he will take the Woman to his Wife, and he answers I will; and it is demanded of the Woman, if she will take the Man to her Husband, and she answers I will, by this says Mr. Swinburn, Marriage, and not Spousals are contracted. In our Form of Marriage the Words are both ways, *I will*, and *I do*; and I don't doubt but all People when they came into a Church do apprehend the Words *I will*, to signify a Consent to present Marriage there, whatever they may mean out of a Church, or upon another Occasion.

It is not necessary in Contracts of Marriage that both Parties use the same Words or Expressions; but if one Party says I will marry thee, or I will contract Matrimony with thee, and the other answers I am content, or I am pleased, &c. hereby Spousals *de futuro* are contracted; or if one Party says I promise to marry thee, and if thou be content to marry me, then kiss me, or give me thy Hand, the other Party kissing or giving the Hand accordingly, Spousals are thereby contracted.

Mr. Swinburn is of Opinion, that where there has been a Treaty of Marriage before, then by the Words *I will marry thee*, or *I will take thee to be my Wife*, Matrimony is induced: Also where the Parties use the Words *from henceforth I will take thee*, it is as much as if they had said *I do take thee*, and an absolute Marriage; and even where the Words are doubtful whether they import a Promise of future Marriage, or present Matrimony, because a double Construction may be put upon them, there they shall be taken in favour of Matrimony, unless it be in prejudice of a second Marriage undoubted, or unless the former Contract was clandestine or secret.

Words of future Time amount to a Marriage or a consummation

But admitting the Words import no more than a Promise of future Marriage, yet if the Parties afterwards lie together, the Contract thereby passes into a real Marriage in construction of Law.

Although the Words of the Contract, neither in their natural Signification, nor by common Use and

and Acceptation import Matrimony, yet if the Parties thereby intend to contract Matrimony they are inseparable Man and Wife, not only before God, but also before Man, in case their Meaning fully appear: And if there be no Witnesses of the Contract, yet the Parties having really, though secretly contracted themselves in Words of present Time, are very Man and Wife before God; nor can either of them with a safe Conscience marry elsewhere, 'till such Marriage is dissolv'd by Death, breach of Faith, &c. for Proof is not of the Essence of Matrimony, their Consciences are as a thousand Witnesses in the presence of God, though it be otherwise in humane Judicatures.

Private Contracts without Witnesses.

It is not necessary that the Parties contract Matrimony at the same Instant, by speaking and answering immediately one after another; but there be some distance of Time betwixt the Promise of the one and the other, the Contract may be good, if the Party whose Promise is first pass'd perseveres still in his or her Purpose, until the other Party hath likewise promised: But when Children upwards of seven Years of Age (who have not attained to lawful Years, viz. fourteen and twelve, are contracted by Words of present Time, as I take thee to my Wife, I take thee to my Husband, this by interpretation of Law is not Matrimony but Espousals (if it be either) for they may dissent when they have attained their said respective Ages.

Infants.

Where the Words of the Contract are spoken only in jest, they are said not to be obligatory so serious a Matter; and this will depend very much on the apprehension of the Witnesses present.

Words spoken in jest not binding.

If one Party contract conditionally, and the other absolutely; as where the Man says, I take thee to my Wife, and the Woman answers, I take thee to my Husband if my Father consent, this is void.

Conditional Promises.

Where a Contract is made in Words of future Time, as I will have thee for my Wife, and I

Marriage in Words of present will



sent Time  
avoids a Con-  
tract of fu-  
ture Marriage  
not consum-  
mated.

Contracts of  
Marriage be-  
tween absent  
Parties, when  
binding.

By Proxy.

Form of con-  
tracting by  
Proxy.

The Party  
constituting  
the Proctor,  
must remain  
in the same  
Mind 'till the  
other Con-  
sents.

will have thee for my Husband, and this is not carried into execution by consummation or otherwise, if the Parties marry elsewhere, the second Marriage will hold.

As to Contracts of Marriage between absent Parties, these are of three Kinds; by Mediation of their Proctors, by Messengers, or by Letters; and it is said to be necessary in these Cases that the Parties have some knowledge of each other, at least by Fame or Report, it being impossible to yield our Assent to contract Matrimony with those to whom we are entirely Strangers.

When Spousals or Matrimony are to be contracted by a Proctor, it is necessary that the Proxy (or Letter of Attorney) be special, expressing a certain Person with whom Spousals or Matrimony is to be contracted, as, *I make such a one my Proctor to contract Matrimony or Espousals for me, or in my Name with A. B.* for it is not sufficient if the Proxy be thus, *viz. I make A. B. my Proctor to contract Matrimony for me with any Woman*, or generally to do for me all and singular whatsoever I my self could do if I were personally present, these are void Authorities in this Case.

The Form of contracting Matrimony by a Proxy, according to *Swinburn*, is thus: *I do contract Matrimony with thee in the Name of such a one, whose Proctor I am, or such a Man doth contract Matrimony with thee, by me his Proctor*; and the Woman answers, *I do take him to my Husband, by thee being his Proctor.*

And it is requisite that the Party who did constitute the Proctor, do persevere and continue in the same Mind until the Contract is finish'd; for if he repent in the mean Time, or revoke his Proctor, which he may lawfully do, (altho' he had covenanted, and even sworn not to revoke) the Contract is void, and that notwithstanding the Proctor be ignorant of the Revocation; for the perseverance and continuance of the Party's Consent, which did constitute, is to neces-

necessary, that without it the Contract is not of any force.

But the Party constituting is presum'd to remain in the same Mind 'till he revokes, unless where the Proxy having imparted to the Woman the cause of his coming, and pronounced the Words of Spousals or Matrimony, according to his Commission, and she do not express her Consent thereunto 'till a long Time after, there the Man's Consent is not presum'd to endure if he affirm the contrary, and consequently the Contract is void.

And if the other long neglect to consent, the Party constituting is not presum'd to remain in the same Mind.

But it seems to have been made a Question, whether the Party having first secretly revok'd his Proxy at the time of the Contract of the Spousals or Matrimony, and yet afterwards ratifying or confirming the same, the Contract be good; the better Opinion is, that such a Contract is not good.

Secret Revocations avoid the Contract.

But it is held, that not only when the Party doth by express Words revoke the Authority, but also when he doth any act which implies a Revocation; as by making a second Mandate to contract Matrimony with another Woman, there a Contract made in pursuance of the first Authority is void.

Acts amounting to a Revocation.

A Contract by a Messenger, is where the Party sent has no Mandate, (for if he have, he is a Proctor) but is charg'd barely with the delivery of a Letter or Message; in this Case it is held, that as soon as the Party to whom the Message or Letters of Matrimony are sent, do acquiesce and agree thereto, by expressing the like Consent as the Message or Letter do import, (whether it be Matrimony or Spousals only) the Contract is thereby perfect, without expecting any Ratification from the Party who sent the Letter or Message, unless it appear such Party did dissent before the other consented.

Contracts by Messengers.

In contracting Matrimony or Spousals by Letters, this one thing principally is to be observed, namely, that as it is necessary for that Party which sendeth the Letters containing Words fit

for Spoufals or Matrimony (as, *I promise hereby that I will, or that I do take thee to my Wife, &c.*) still to continue in the same Mind without Alteration, until the time of the others Consent, so on the other side, it is necessary that that Party to whom the Letters are sent, upon Receipt thereof, or shortly after, do express the like Consent, either to him which brought the Letters, or to some others, or else by Letters to the former Party; which things being perform'd by both Parties, the Contract is good: But if either the Party which sent the Letters repent in the mean time, (which notwithstanding, is not presumed unless it be proved) or the Party which received the Letters, do not then, or shortly after the Receipt thereof, deliver expressly the like mutual Consent, it is in effect, as if neither of them had ever consented.

The Party breaking his Contract liable to be prosecuted in the Spiritual Court; and to yield Damages if sued at common Law.

But where a Person (mutually contracted) refuses to marry, according to his Promise, he is not only liable to a Prosecution in Court Christian, but also to an Action at common Law; and Damages have been frequently recover'd for Non-performance of such Contracts.

In *Michetmas* Term the 10 *W. 3. B. R. Harrison* brought his Action against *Mrs. Cage*, for that in Consideration he had promis'd to marry her, she promis'd to marry him, for which he obtain'd a Verdict: In Arrest of Judgment it was objected, that altho' the Woman in such Cases might have her Action, yet the Man could not, because Marriage was no Advantage to the Man but to the Woman: But my Lord Chief Justice *Holt* held, that the Action was well grounded upon the mutual Promises, for if the Woman's Promise did not bind, neither did the Man's; and it was resolv'd to be actionable on both sides.

And in *Easter* Term the 3 *Anna*, in the Case of *Hutton* and *Mansel*, it was held by the Lord Chief Justice *Holt*, that if there be an express Promise by the Man, and it appear the Woman countenanced it, and by her Actions at that time, behav'd herself as if she agreed to the Matter, altho

Actions as well as Words may express a Consent.



altho' there be no actual Promise, yet that shall be sufficient Evidence of a Promise on her side.

In the Case of *Jesson and Collins*, Easter Term, 2 *Anna*, in the King's Bench, it was resolv'd, that a Contract in Words in present time was a Marriage; as where it is said, *I marry you; you and I are Man and Wife, &c.* And such Contracts are not releaseable, but where the Contract is in Words of future time, as *I will marry you, I promise to marry you, &c.* which refer the Marriage to a future Act, there it is releaseable: But where the Party brings his Action upon a Promise of future Marriage, in order to recover Damages, it is held, that he thereby waves his Remedy in the Spiritual Court.

Contract in Words of present time cannot be release'd.

But Promises of future marriage may.

In *Wigmore's Case*, Michaelmas Term, 5 *Ann.* B. R. the Chief Justice held, that if the Contract was in Words of future time, as *I will take thee, &c.* and he does take her accordingly, and cohabit with her, 'tis a Marriage, and the Spiritual Court cannot punish for Fornication where the Parties are contracted.

This brings me to consider of Marriages solemniz'd by Dissenters, and whether they differ at all from such Contracts as are made before any number of Lay Friends met together.

In *Haydon's Case*, 9 *Anna*, before the Court of Delegates, it appear'd that *Haydon*, and *Rebecca* his Wife, were *Sabbatarians*, and were married by one of their Ministers, in a *Sabbatarian* Congregation; the Form in the Common Prayer Book was used, except the Ceremony of the Ring; they lived together as Man and Wife for seven Years, and then *Rebecca* died, whereupon *Haydon* took out Letters of Administration to her, but *Gould* and *Margaret* his Wife, who was Sister to *Rebecca*, sued a Repeal, suggesting that *Rebecca* and *Haydon* were never married; and it appearing that the Minister who married them was a mere Layman, and not in Orders, the Letters of Administration which had been granted to *Haydon* as her Husband, were repeal'd, and a new Administration granted to the said *Margaret Gould* her Sister; and this Sentence upon an

Marriages by Dissenters does not entitle the Parties to the Privileges of a Marriage legally solemniz'd.

Appeal was affirm'd by the Court of Delegates, at *Serjeant's Inn* in *Fleetstreet*; for it was held, that as *Haydon* demanded a right to him as Husband by the Ecclesiastical Law, he ought to prove himself a Husband by that Law, and so the Court ruled: And a Case was cited out of *Swinburn*, where such a Marriage had been ruled to be void as to the Privileges attending legal Marriages.

And it is observ'd in that Case, that an Act of Parliament was thought necessary, after the grand Rebellion, to entitle People who had been married by Justices of Peace, to such legal Advantages of Dower, Thirds, &c. as attended Marriages duly solemnized according to the Rites of the Church of *England*; and the Act of Parliament of the 7 & 8 *W. 3. c. 3.* seems to put this Matter out of all Doubt which lays a Penalty on Clergymen in Orders, if they celebrate Marriage in a clandestine manner; for if the same Privileges and Advantages attended Marriages solemnized by the Dissenters, as these celebrated according to the Church of *England*, how easily would that Act be evaded, or rather render'd of no Effect. There would then be no occasion for Licence or Bans, for making Oath, or giving Security that there were no legal Impediments, but every one might do what was right in his own Eyes, who should admit himself of a dissenting Congregation.

Marriages by  
Romish Priests  
deem'd legal  
Marriages.

But it seems Marriages by Romish Priests, whose Orders are acknowledg'd by the Church of *England*, are deem'd to have the Effects of a legal Marriage, at least in some Instances, as in the Case of Mr. *Fielding*, who was married by a Romish Priest to Mrs. *Wadsworth*: This was held to be such a Marriage, as to make it Felony in him to marry afterwards to the Dutches of *Cleveland*; and if it was such a Marriage as to bring a Man within the danger of his Life, it would be hard if he should not also be entitl'd to the Advantages the Law confers on legal Marriages; and I believe no Man will affirm, that a Marriage celebrated by the Dissenters, will bring a Man

a Man in danger of the Statute, which makes it Felony to have more Wives than one.

As to Marriages within the Degrees prohibited, 'tis observable, that those in the ascending and descending Line, that is of Children with their Father, Grand-father, Mother, Grand-mother, and so upwards, are prohibited without Limit, because they are the Cause (immediate or mediate) of their being, and it is directly repugnant to the Order of Nature, which assign'd several Duties and Offices essential to each, that would thereby be inverted and overthrown. A Parent cannot obey a Child, and therefore it is unnatural that a Parent should be a Wife to a Child: A Parent as a Parent, has a natural Right to command and correct a Child, and that a Child as Husband should command and correct the same Parent, is unnatural. As to degrees of Affinity, Whether th: it has been observ'd, that altho' I be not directly marrying a

Marriages in the ascending and descending Lines prohibited in infinitum.

Whether th: it has been observ'd, that altho' I be not directly marrying a Wife's Sister, yet when God commands me I shall not marry my Brother's Wife, by parity of Reason, he forbids me to marry my Wife's Sister, for between one Man and two Sisters, and one Woman and two Brothers, is like Analogy and Proportion.

And when this Point of marrying the Wife's Sister came under Consideration in the King's Bench, *Mich. 25. Car. 2. Hill. v. Good*, tho' it was alledg'd, that the Precept *prima facie* seem'd to be only against having two Sisters at the same time, and therefore a Prohibition was at first granted to the Spiritual Court, yet in *Trin. 26 Car. 2.* after hearing the Civilians, they granted a Consultation. *Vaugh. 382. Keb. 166.*

And in the Case of *Wortley and Watkinson*, up- Daughter of on the like Parity of Reason, where one had married the Daughter of the Sister of his former Sister. Wife, which is the same in Proximity, as the Nephew marrying his Father's Brother's Wife: a Consultation was granted. *2 Lev. 254.*

But where one married the Wife of his great Uncle, this was declared not to be within the Levitical Degrees, in the Case of *Harrison* and his great Uncle. *Burwell* cle.



*Burwell*, 20 *Car.* 2. *Vaugh* 206. 2 *Vent.* 9. And it is further declar'd there, that were it not for the Statute of 28 *Hen.* 8. c. 7. we should be under no Obligation to observe the *Levitical* Degrees in this Kingdom.

And it was resolv'd, that the Temporal Court are by the said Act now become the proper Judges what Marriages are within or without the *Levitical* Degrees, and are to prohibit the Spiritual Courts, if they impeach any Persons for Marriages without these Degrees.

I shall add a Word or two in relation to Divorces, and so conclude this Head.

Divorce of two kinds.

Divorce is either a *Vinculo* from the Bond of Matrimony, or a *Mensa & thoro*, an exclusion from Bed and Board.

Divorces which dissolve the Bond of Marriage and give the Parties Liberty to marry again.

Divorces which dissolves the Band of Matrimony are either *causa pracontractus*, by reason of *pracontract*, *causa frigiditatis*, where the Party hath perpetual Impotency; or *causa affinitatis aut consanguinitatis*, for Affinity or Consanguinity. There may be a Divorce also *causa savitiae sive metus*, where the Husband deprives the Wife of her Apparel or other Necessaries; or where one of the Parties is in dread of being murdered by the other, by Poison, or otherwise, it is a good ground of Separation.

Divorces from Bed and Board only.

A Divorce *a mensa & thoro*, from Bed and Board for Adultery, does not by our Law dissolve the Marriage; but where a Woman is so divorc'd, the Children that she has afterwards, shall be deem'd Bastards, unless it can be shewn the Husband had Access to her.

### Militia.

13 *Car.* 2. c. 6. The Militia solely in the Crown.

THE Preamble of this Act recites, that the sole supreme Government and Command of the Militia, and all Forces by Sea and Land, and of all Forts and Places of Strenth in this Kingdom, is by Law, and ever

was undoubtedly in the King; and that both or either of And not in the Houses of Parliament cannot pretend to the same, or the Houses of can lawfully raise or levy War. offensive or defensive a- Parliament gainst the Crown. *Stat. 13 Car. 2. c. 6.* who may nei-

And it is enacted, that the Militia and Land Forces ther levy War of this Kingdom, shall be order'd and manag'd accord- offensive or ing to such Commissions and Instructions as they shall defensive. receive from his Majesty, until an Act under considera- tion, for exercising the Militia, and for the greater Ease and Safety of the King and his People shall be perfected.

This Act declares the sole Command of the Militia to 13 & 14 Car. 2. be in the King, as is declar'd by the said former Act. c. 3.

*Stat. 14 Car. 2. c. 14.*

And it is enacted, that the King from time to time, as King empow- Occasion shall require, may issue several Commissions of er'd to make Lieutenantcy to such Persons as his Majesty shall think fit, Lord Lieute- to be his Lieutenants for the respective Counties, Cities nants, and Places in this Kingdom; which Lieutenants shall

have power to call together all such Persons, and to arm Who shall and array them in such manner, as is hereafter appointed, arm and com- and to form them into Companies, Troops and Regi- mand the Mi- ments; and in Case of Insurrection, Rebellion, or In- litia,

vasion, to lead and employ them as well in their several Counties, &c. as into other Counties and Places, for sup- In their own pressing and repelling Rebellions and Invasions, accord- and in other ing to their Directions from the King. And that the Counties.

said respective Lieutenants may give Commissions to such And make Persons as they shall think fit, to be Colonels, Majors, Deputy Lieu- Captains and Commission-Officers, and to present to the tenants, and King the Names of such Persons, as they shall think fit other Officers,

to be Deputy-Lieutenants, and upon his Majesty's Ap- probation, shall give them Deputations accordingly, pro- vided that his Majesty shall have Power to direct and or- der otherwise, and may appoint Commission, or displace such Officers as he shall think fit: And the said Lieute- Duty of De-

nants and Deputy-Lieutenants, or any two, or more of puty-Lieute- them are empower'd to train and exercise, and Conduct nants. the Persons so armed, as is hereafter declared. *Ibid.*

And the respective Lieutenants and their Deputies, or 13 & 14. Car. the major part of them, or in the Absence of the Lieu- 2. c. 3.

tenant, the major part of the Deputy-Lieutenants pre- Lieutenantcy sent, being three at the least, are empower'd to charge a- empower'd to ny Person with Horse, Horseman and Arms, or with a charge Per- Foot Soldier and Arms, in the County City, or Town sons to find Corporate where his Estate lies, provided that no Person Horse or Foot, be charg'd with sending a Horse, Horseman and Arms, unless he have 500 l. per Annum in Possession, or 6000 l. Personal Estate, besides the Furniture of his Houses, and so

**None to be** so proportionably for a greater Estate in Lands or Goods; **charg'd with** And no Person shall be charg'd with finding a foot Soldier or Arms, who hath not 50 *l. per Annum*, or a person a Horse under 500 *l. per Annum*, or a person an Estate of 600 *l.* besides his Stock upon the Ground, *num.* or 6000 *l.* and so proportionably for a greater or lesser Estate; nor in Goods. shall any person be charg'd to find both Horse and Foot One having in the same County; and no person chargeable with finding a Horse, or contributory towards finding a Horse, 50 *l. per Annum*, or 600 *l.* &c. shall for the same Estate be chargeable towards finding a Foot Soldier, &c. And it shall be lawful to impose the providing a Horse, Horseman and Arms, by a Foot Soldier, joining two or more persons together in the Charge, as the Lieutenantcy shall think proper. *Ibid.*

**None to find** Provided that no Person who hath not 100 *l.* a Year both Horse in possession, Freehold, Leasehold, or Copyhold, or 1200 and Foot. *l.* personal Estate, shall contribute towards a Horse, &c. **Two or more** And the Lieutenantcy, or any three of them, are impow- may be join'd'er'd to hear Complaints, examine Witnesses upon Oath, towards find- and give Redress in any matters relating to this Act. *Ib.* ing a horse &c. And the Lieutenantcy shall require all persons charg'd **None having** to the Horse, to allow 2 *s.* a Day to the Troopers, for under 100 *l.* the Maintenance of the Man and Horse, and 12 *d.* a Day *per Annum*, or for the Foot Soldiers, if they serve not in person, for 1200 *l.* in every Day they shall be out. *Ibid.*

**Goods to con-** And for the furnishing Ammunition and other Necess- tribute to the saries, the Lieutenantcy are impow'r'd to lay Rates upon Horse. the respective Counties and Places, not exceeding the pro- **Two Shillings** portion in any one Year of a fourth part of one Months **a Day to each** Assessment in each County, after the Rate of 70000 *l.* **Trooper, and** a Month charg'd by a late Act, for the further Supply **1 *s.* to Foot** of his Majesty to be assess'd, collected and paid accord- **Soldiers.** ing to the Direction of the Lieutenantcy; and under the **Money rais'd** like Pains, and by the like Ways and Means as are pre- **for Ammuni-** scrib'd by the said Act, for raising the said 70000 *l.* *per* **tion by the** Month.

**Lieutenantcy.** And in Case of Invasions, Insurrection or Rebellions **Soldiers in** where there shall be Occasion to draw out such Soldiers **Case of Inva-** into actual Service, the Persons chargeable as aforesaid, **sion, &c. to** shall provide such Soldier with Pay in Hand, not exceed- **have a months** ing one Months Pay, as shall be directed by the Lieute- **Pay in Hand,** nancy, or any two of them; for the re-payment where- **of the persons** of, and for Satisfaction of the Officers for their Pay during **charg'd.** such time as they shall be in actual Service, not exceeding **To be repaid** one Month, Provision shall be made by the King for the **by the Trea-** time being, out of the publick Treasury or Revenue; **sury, before** and where a Month's Pay shall have been provided and ad- **any more Mo-** vanced by any person as aforesaid, he shall not be charg'd **ney shall be** with any other like Months Payment, until he shall be **advanc'd.** reimburs'd what he has so advanced. *And*



And the said Lieutenants and their Deputies, or the 13 & 14 Car. chief Officers upon the Place, are impower'd to charge 2. c. 3. Car-Carts, Waggon, and Horses, for the carrying Powder riages press'd and other Ammunition, allowing 6 d. a Mile for every to carry the Carriage with five Horses or six Oxen, and to propor- Ammunition tionably; and for every Horse 1 d. upon the marching of allow'd 6 d. a any Regiment, &c. on any Invasion, Insurrection, or Mile. Rebellion; and the said Lieutenants or Deputies, or the said chief Officers, are impower'd to imprison Mutineers Penalty of and such Soldiers as do not do their Duty, and inflict a Soldiers not pecuniary Mult on them not exceeding 5 s. or the pain doing their of Imprisonment not exceeding twenty Days. *Ib.* Duty.

And if any Person assess'd or charg'd by the Lieutenancy, as aforesaid. shall neglect to provide such Horse, furnishing Horseman. Arms, &c. or to pay such Sums toward pro- Horse, Arms, viding and furnishing them as aforesaid, the Lieutenancy, &c. or any three of them may inflict a pain not exceeding 20 l. on every such Offender, and by Warrant under their Hands and Seals levy such Sums of Money, or the value of such Horse, Arms, and Furniture, by Distress and Sale, with the necessary Charges of levying thereof. to be employ'd to the same Uses in default whereof the same was impos'd. *Ibid.*

And if any Horseman shall detain or imbezil his Horse, Penalty of Arms, or Furniture, then the Lieutenant. his Deputies, embezzling or any two of them, may imprison such Offender 'till he Arms, &c. hath made satisfaction; and if any Person who ought to serve as aforesaid, shall not appear and serve completely furnish'd, at the beat of Drum, sound of Trum- The Pains in- pet, or other Summons, the Lieutenant, or any two of his Deputies, if the Default be in the Persons interested, sons not ap- may imprison him for five Days, or inflict a Pain, if an peering upon Horseman not exceeding 20 s. and if a Footman not ex- Summons. ceeding 10 s. to be paid without delay; and if any Person shall neglect to send in his Horse, Arms, or other Furniture, upon such Summons as aforesaid, then the Pain of not Lieutenant and his Deputies, or any three of them may furnishing out inflict a Pain on the Offender, not exceeding 5 l. to be le- a Horseman vied by Distress and Sale, with the Charges thereof. *Ibid.* on Summons.

And the Lieutenancy are impower'd, in order to discover the Ability of any Person, to examine upon Oath such Persons as they shall think fit, other than the Persons themselves to be assess'd. *Ibid.*

And every Lieutenant is requir'd to appoint one or Witnesses ex- more Treasurers, or Clerks, for receiving and paying such amin'd as to Monies as shall be levied, of which they shall every six the ability of Months give an Account in Writing, upon Oath, to the Persons as- Lieutenant, which shall be certified to the Privy Council. sess'd. and

and a Duplicate thereof certified to the Quarter Sessions, *Ibid.*

**Deputies to obey the Orders of the Lieutenants.** And the Deputy Lieutenants shall obey such Orders as they shall from time to time receive from the respective Lieutenants for putting this Act in execution. *Ibid.*

**Lieutenancy of their Deputies.** The said respective Lieutenants, or any two or more of their Deputies, are hereby empower'd by Warrant under their Hands and Seals, to employ any Persons (of whom a Commission Officer, the Constable, or his Deputy, or in their absence some other Officer of the Parish to be two) to search and seize all Arms of such Persons as

**No search in the Night but in Towns.** they shall judge dangerous to the Peace of the Kingdom, and to secure them for the Service aforesaid. Provided that no search be made in any House between Sunset and Sunrise, except in Cities and their Suburbs, or in Market Towns, and Houses within the Bills of Mortality, where

search may be in the Night time, if the Warrant so direct; and in case of Resistance, to enter by force. But

**Peers Houses.** no Dwelling-house of any Peer to be search'd but by immediate Warrant from his Majesty under his Sign Manual, or in the presence of the Lieutenant or Deputy

**May enter by force.** Lieutenant: And it shall be lawful in all Cases where Resistance is made to enter by force, and the Arms so seiz'd may be restor'd, if the Lieutenant, or in his absence two of his Deputies shall think fit. *Ibid.*

**Constables, &c. requir'd to assist.** And all High Constables, Petty Constables, and other Officers, are requir'd to be assisting to the said Lieutenants and their Deputies in the execution of this Act; and all Persons acting in pursuance of the same, are hereby indemnified. *Ibid.*

**Tenants to be charg'd for their Landlords.** And where any Person shall be charg'd by this Act towards either Horse or Foot in any County or Place where he doth not reside, the Lieutenancy shall send Notice to his Servants and Tenants who shall occupy his Lands, who shall convey the same to their Master or Landlord, and return his Answer to the Lieutenancy: And upon neglect of the Landlord to provide such Horse, Foot Soldier, or Arms, as is charg'd upon him, the Tenant shall provide as the Landlord ought to have done; and if the Tenant neglect the same, the Lieutenancy by Warrant from two or more of them may levy such Penalties as are appointed by this Act by Distress and Sale of the Offender's Goods;

**And may deduct it out of their Rents.** and it shall be lawful for the Tenant to deduct out of his Rent, which shall then next become due, all such Money as he shall necessarily expend in providing such Horse, Foot Soldier, Arms, &c. or shall be levied upon him by Distress for any Default as aforesaid, any Covenant in his Lease to the contrary notwithstanding, unless the Land-

lord

lord shall make appear to the Lieutenancy, or any two of them, within two Months after the levying such Penalties, that the Default and Penalty was occasion'd by the wilful neglect of the Tenant. *Ibid.*

Provided that no Peer shall act as Lieutenant or Deputy Lieutenant, unless before six of the Privy Council, or and Officers such other Person as his Majesty shall appoint, he takes to take the Oaths of Allegiance, and the Oath following: Oaths of Al-

*I A. B. do declare and believe that it is not lawful upon any pretence whatsoever to take Arms against the King, and I do abhor that traitorous Position that Arms may be taken by his Authority against his Person, or against those that are commission'd by him in pursuance of such Military Commission. So help me God.* Supremacy, and an Oath declaring the unlawfulness of taking Arms against the King.

And Persons under the degree of a Peer are made incapable of acting as Lieutenants, Deputy Lieutenants, or Officers in the Militia, 'till they take an Oath to the same effect, and also the said Oaths of Allegiance and Supremacy; and the said Lieutenants, and in their absence any two of their Deputies are empower'd to administer the said Oaths to the Officers and Soldiers. The Oaths to be administred to the Deputy Lieutenants, by a Lieutenant or Justice of Peace. *Ibid.*

And it is declar'd, that the general Muster and Exercise of Regiments shall not be above once a Year, and the Training and Exercising of single Companies not above

four times in the Year, unless by the special direction of his Majesty or the Privy Council; and such single Companies or Troops shall not be exercis'd above two Days at a time; and at a general Muster of Regiments no Officer or Soldier shall be compelled to stay but four Days at a time from his Habitation; and a Musqueteer shall bring with him at such Muster, half a Pound of Powder at the charge of the Person sending him; and every Horseman a quarter of a Pound of Powder, and Arms offensive and defensive, with Furniture for Horse as followeth: The

defensive Arms, a Back, Breast, and Pot. the Breast and Pot Pistol Proof; the offensive Arms, a Sword and Case of Pistols, the Barrels whereof fourteen Inches long; the Furniture for the Horse, a great Saddle, with Burrs and Straps to fix the Holsters to, a Bit and Bridle, with a Pectoral and Crupper. And a Foot Soldier shall bring a Musket not under three Foot in the Barrel, and a Bore for twelve Bullets in the Pound, with a Collar, Bandileers, and Sword. A Pikeman shall be arm'd with a Pike of Ash not under sixteen Foot in length, with a Back, Breast, Head-Piece, and Sword. *Ibid.*

General Muster once a Year.

Single Companies Quarterly.

Musqueteer.

Horseman.

Their Arms.

Provided



None compellable to serve in Person.

Soldier muster'd to give in his Name and Place of Abode.

Not to be chang'd without leave. Pain of 20 l. for departing without leave.

Saving for the Tinnors.

Saving for London.

Saving for Corporate Towns.

Provided that no Person charg'd with finding Horse or Foot, or contributing thereto, shall be compellable to serve in his own Person, but according to such proportion as he shall be charg'd, shall find one or more sufficient Men to be approv'd by the Captain, subject nevertheless to be alter'd upon appeal to the Lieutenant, or any two of the Deputy Lieutenants; and every one who shall serve in his own Person, who must be approv'd as aforesaid, or such Person as shall be accepted in his stead, shall at the next Muster in which he is to serve, give in his Christian and Sirname, and Place of Abode, to such Persons as the Lieutenant or Deputy Lieutenants shall appoint, to the end he may be list'd, and from thenceforth he shall not be exchang'd or desert the Service, or be discharg'd but by leave of the Lieutenant or Deputy Lieutenants, or his Captain, (subject nevertheless to such appeal as aforesaid) first obtain'd in Writing under Hand and Seal, upon pain that such Person departing from the Service, shall forfeit 20 l. to be levied on his Goods and Chattels as other Pains are appointed to be levied by this Act; and for Non-payment or want of Distress, to be committed to the common Goal not exceeding 3 Months. *Ibid.*

Provided that this Act do not extend to the Tinnors of *Devon and Cornwall*; but that the Lord Warden of the Stannaries may Array and Assess, Arm, and Muster them as heretofore, observing the Rules and Proportions appointed by this Act. *Ibid.*

Provided that his Majesties Lieutenants, commission'd for the Militia of the City of *London*, may continue to list and levy the Train-bands and Auxiliaries of the said City, in such manner as was used in forming the present Forces now rais'd; and it shall be lawful for the said Lieutenants of the said City, by Warrant from his Majesty, to levy yearly so much Money as they shall find needful for defraying the Arrears of those Soldiers rais'd for his Majesties Restoration, and the Arrears and necessary Charges of those that now are or shall be rais'd, with the Ammunition and other incident Expences of the Militia, as the present Assessment is levied; and not exceeding in one Year the proportion of one Months Tax, which the said City now pays towards the Tax of 70000 l. per Month. *Ibid.*

Provided that no Soldier or Officer of the Militia of any City, Town Corporate, or Port Town, who have us'd to be muster'd only within their own Precincts, shall be compellable to appear out of the same at any Muster or Exercise; but such Cities and Towns are hereby chargeable

ble to find their usual number of Soldiers, unless the Lieutenants find cause to lessen the same. *Ibid.*

Provided that this Act do not extend to avoid any Not to avoid Covenant or Agreement to be made between Landlord and Agreements Tenant for finding Horse or Arms, or paying any Rates between or Taxes, or other Charges, by any Tenant, but they Landlord and shall be born and paid according to such Covenants and Tenant. Agreements. *Ibid.*

Provided also that this Act do not extend to make any Isle of *Wight*. alteration in the Militia in the Isle of *Wight*, but the same shall be raised there as heretofore. *Ib.*

Provided also that it shall be lawful for the Constable *Tower Hamlets*. or Lieutenant of the *Tower*, to continue to levy the Trainbands of the *Tower Hamlets*, in such Manner as to the number and quality of Persons, as was observ'd in forming the present Forces thereof. *Ib.*

Provided that this Act be not construed to extend to Forces not to the giving any power for the transporting any of the Sub- be command-jects of this Realm, or to the compelling them to march ed out of this out of this Kingdom, otherwise than according to the Kingdom but Laws of *England*. *Ib.* according to

Provided that no Peer shall be charg'd towards Horse Law. or Foot in other Manner than as follows, *viz.* The King Peers to be from time to time shall issue Commissions under the assess'd by Great Seal to so many Peers, not under twelve, as he shall Peers. think fit, who, or any five or more of them, shall assess every Peer according to the Limitations and Proportions in this Act, for the finding Horse and Foot Soldiers Arms, &c. and shall have power to put this Act in execution, as well by laying Assessments as imposing Pains, (Imprisonment of Peers excepted) which Assessments, together with the Pains imposed, shall be certified to the respective Lieutenants of each County, to the Intent the said Charge may be born, and the Pains levied according to the Intent of this Act; and in case any default shall be in performance of any thing to be done or paid by any Peer by Vertue of this Act, the respective Lieutenants and Deputy Lieutenants, or any three of them, may cause Distresses to be made in any of the Lands of such defaulter within their respective Limits; and if satisfaction be not made within one Week after such Distress taken, the same may be sold for performance of the said Service and the Charge incident thereto; and if the Tenant of a Peer be distrain'd for such default, he may deduct the Sum levied out of his next Rent. *Ib.*

The several Lieutenants, and in their absence, or by 15 *Car. 2. c. 4.* their direction, their Deputy Lieutenants, or any two or Two Deputy more of them, are empower'd to lead, train, exercise, or Lieutenants

impower'd to put in readiness, or by their Warrant, cause to be led, command the exercised, &c. all, or any of the persons raised according Militia. to the abovesaid Act of the 14 Car. 2. c. 3. Stat. 15 Car. 2. c. 14.

**Pain of denying the Soldiers Pay.** And all persons charg'd by virtue of this or the said former Act, towards Horse or Foot, shall under the pain of 5 s. pay and allow upon Demand, 2 s. 6 d. a Day to each Trooper, for the maintenance of Man and Horse; and under the pain of 2 s. pay to each foot Soldier 1 s. a Day, for so many Days as he shall be absent from his Dwelling, by occasion of Muster or Exercise, according to the Rules of the said Acts; and the said pains shall be paid to such Soldier to whom his Pay was denied, being demanded within six Weeks after each default, or before the next Muster or training, and not afterwards. *Ibid.*

**Persons neglecting to find a foot Soldier forfeit 5 l.** And if any person charg'd according to the said Acts, shall neglect to provide such foot Soldiers and Arms as are charg'd upon him, the Lieutenant and Deputy-Lieutenants, or any three or more of them, may inflict a pain not exceeding 5 l. for every Offence. *Ibid.*

**Persons not having 50 l. towards the Foot.** And the Lieutenant and Deputy-Lieutenants, or any three or more of them, shall and may require the Con-*per Annum*, or 600 l. charg'd a reasonable Warning, upon a pain not exceeding 40 s. for every Omission, such sufficient foot Soldiers, with Arms, Wages, and other incident Charges, as the said Lieutenants and Deputy-Lieutenants shall assess or charge, according to the Rules and Proportions of the said Acts upon Revenues, under 50 l. *per Annum*, or upon personal Estate under 600 l. *Ibid.*

**The Sums assess'd levied by distress and sale, if not paid.** And if any person shall upon Demand, refuse or neglect to provide a foot Soldier, according to the proportion aforesaid, or to pay any Sum he shall be assess'd at by a pound Rate, according to a List sign'd by three or more of the Lieutenancy, for defraying the Charge and Expence disburs'd in furnishing Arms as aforesaid, it shall be lawful for the Constable, by Warrant for that purpose, to levy the Sum assess'd, by distress and sale of the Offender's Goods, with the Charges of the distress.

**Tenants to pay the Sums assess'd, and deduct them out of their Rent.** And every Tenant assess'd as aforesaid, is requir'd to make payment of the Sum assess'd, and to deduct the same out of the next Rent payable to the Landlord, and in Default thereof, the Goods of such Tenant are liable to be distrained, and sold as aforesaid. *Ibid.*

**Fee to the Muster Master.** And once every Year each Soldier shall pay to his Muster-Master, a Sum not exceeding 1 s. for a Horseman, and 6 d. for a Footman, as the Lieutenancy shall direct, who are impower'd to levy the same, by distress and sale, upon the



the Goods of such persons who are charg'd with the finding such Soldier making default, unless the default be in the Soldier, who shall then be accountable for the same : Who is to be And every Muster Master shall be an Inhabitant of the of the same County.

At every Muster and Exercise, a Musqueteer shall bring 15 *Car. 2. c. 4.* with him half a pound of Powder, and half a pound of Soldiers to Bullets; and if he have a Match Lock, three Yards of bring with Match, to be found at the charge of the person provi- them Powder ding such Soldier; and every Horseman shall bring with and Ball. him a quarter of a pound of Powder, and a quarter of a ponnd of Bullets, at the charge of the person sending him, on pain of 5 s. for every Omission. *Ibid.*

Provided that every Commission Officer of the Foot, Foot Officers shall be exempted from contributing either to Horse or exempted Foot, where his Estate is charg'd but with one Horse or from finding any less charge; and if it be charg'd with more, then he to Horse or shall be exempted for so much as shall be charg'd with Foot. one Horse. *Ibid.*

And every Trooper and Foot Soldier rais'd by virtue of this Act, shall be subject to the same Duty, as those rais'd by the said former Act; and shall upon the like pains observe the Orders and Directions in this and the said former Act, and shall suffer the same pains for any Offences against the said Act which shall be impos'd and levy'd, as the said Act requires. *Ibid.*

And the Lieutenancy, or any three of them, are im- powered to dispose of so much of the fourth part of one Months assessment, mention'd in the abovesaid Act, to the inferior Officers, as they shall see fit. *Ibid.*

Provided that persons sued for any thing done in pur- suance of this Act, may plead the general Issue, &c. and if the Plaintiff discontinue, &c. shall have double Costs: and such Actions shall be commenc'd in the proper Coun- ty within six Months after such cause of Action. *Ibid.*

And the several payments, pains and forfeitures im- Penalties re- pos'd by this Act, and not otherwise provided to be re- covered by covered, shall be recovered by Warrant from the Lieute- Warrant from nancy, or any three or more of them, by distress and sale the Lieute- of the Offenders Goods; and if he have not sufficient, nancy. they are hereby requir'd by the like Warrant, to commit the Offender to Goal until Satisfaction be made. *Ibid.*

And whereas some Doubt hath arisen, what Estate shall What Estate' be charg'd towards the Foot by the abovesaid Act, 'tis shall be charg- hereby declar'd that no Person having an Estate of 200 l. ed to the Horse per Annum, or personal Estate of the Value of 2400 l. and what to shall be charg'd towards the Foot; and it shall be Foot. lawful for the Lieutenancy, or any three or more of them

according to the proportion in the said Act, to charge any person who hath an Estate of 100 *l. per Annum*, and under 200 *l. per Annum*, or who hath a personal Estate of 1200 *l.* and under 2400 *l.* towards the Foot or Horse, as they shall see fit, but this shall make no Alteration in the Militia in Cities and Towns corporate. *Ibid.*

**Cinque-ports.** Provided that the Lord Warden of the Cinque-ports, and his Lieutenants within the Port Towns and their Members, may put in execution all the powers given by this and the said former Act, to the Lieutenancy of any County, and continue their usual number of Soldiers, unless they see cause to lessen the same; and the Inhabitants of the Ports, shall not be charg'd with Arms or arm'd Men in the Counties adjacent, for their Estates there lying, but for such proportion as they are liable to and are not charg'd within the said Ports. *Ibid.*

*Stamford.*

And it is provided, that the Parish of *St. Martin's* in the Suburbs of *Stamford* shall be charg'd by the Lieutenancy of the County of *Lincoln*. *Ibid.*

2 *W. & M. c. 12*

Whereas by the 13 & 14 *Car. 2.* it was enacted, that in Case of Invasions, Insurrections or Rebellions, the persons thereby charg'd towards the Militia, should provide each their Soldier with his Pay in Hand, as should be directed by the Lieutenancy, not exceeding one months Pay, for repayment of which, and the Satisfaction of the Officers for their Pay, during the time they should be with their Soldiers in actual Service, it was declar'd, that provision should be made by his Majesty, out of the publick Revenue: And it was further provided, that no person who should have advanc'd his proportion, should be charg'd with any other like months payment, until he should be re-imburst'd the said months pay so advanc'd. *Stat. 2 W. & M. c. 12.*

And whereas upon the late Invasion by the *French*, it was found necessary to draw out the said Soldiers into actual Service, and to charge the said persons to provide each their Soldiers with Pay in Hand, altho' the months Pay by them advanc'd was not re-imburst'd. *Ibid.*

The Militia may be rais'd altho' the months Pay advanc'd on the *French* Invasion be not repaid.

It is hereby enacted, that if at any time before the 25th of *December* 1691, it should be found necessary to draw out the said Soldiers into actual Service, and the same should be signified to the respective Lieutenancies by their Majesties, it should be lawful for them, notwithstanding one or more months Pay before that time be not re-imburst'd, to raise and draw out the said Soldiers into actual Service, and to cause the persons charg'd, to provide them with Pay, not exceeding one month, as if all the Pay before advanc'd, had been re-imburst'd. *Ibid.*

N. B.

N. B. An Act to the same Purpose has been made almost every Year since, down to the present Year 1723, for raising the Militia, altho' the Months Pay advanced by the Country in the Year 1690, upon the French Invasion was not repaid. Ibid.

Where two or more persons are charg'd to find a Horse 7 & 8 W. 3. c. or Foot Soldier and Arms, three or more of the Deputy-16.

Lieutenants of the County or Place, are impower'd to The Lieutenant appoint who shall find the Horse and Arms, or Foot Soldier to appoint and Arms; and who shall be Contributors, and to point every settle the Sums to be paid by every Contributor. And if Man's share any person being an Inhabitant of the County or Place, towards Horse shall refuse to pay his proportion upon demand, and if and Arms, he be not an Inhabitant, his Tenant, whole Estate is charg'd, shall neglect to pay his proportion, then any three of the Deputy-Lieutenants of the County or Place, by Warrant under their Hands and Seals, may levy such Sums by distress and sale of the Goods of such Inhabitant, or of his Tenant, as the case is, with the Charges of the distress; and the Tenant may deduct the same out of his next Rent. Stat. 7 & 8 W. 3. c. 10.

And whereas Papists and Nonjurors are not thought fit The Lieutenant to be intrusted with setting out Horses and Arms in the Militia, 'tis enacted, that where any such persons are charge-point Horses ble with the finding Horse, Horseman and Arms, or any and Soldiers Foot Soldier and Arms, the Lieutenants, or in his Absence, three or more of the Deputy-Lieutenants, are impower'd to appoint such persons as they shall think proper, to furnish out such Horse or Foot Soldier and Arms, and charge the Estates of such Papists, &c. with the payment of the following Yearly Sums, viz. for a Horse, Horseman and Arms, 8 l. and for a Foot Soldier and Arms 30 s. to be paid to the persons that shall furnish and allow'd for a set them forth: And in Case such Papists, &c. shall neglect to pay the said Sums upon demand, the Lieutenant, or three or more of the Deputy-Lieutenants may levy the same, by distress and sale of the Offenders, or his Tenant's Goods, with the Charges of such distress, and the Tenants are impower'd to deduct the same out of the next Rents. Ibid.

The abovesaid Clauses in the 7 & 8 W. 3. c. 16, are 9 & 10 W. 3. c. revived and re-enacted. Stat. 9 & 10 W. 3. c. 31. 31.

It is enacted, that the Lieutenants, or their Deputies 4 & 5 Ann. c. shall not issue Warrants for the raising any Trophy money, until the Quarter-Sessions shall have examined and allowed the Accounts of the Trophy money last rais'd and collected for any preceeding Year, and certify'd such Examinations under the Hands and Seals of four or more of the Justices to the respective Lieutenants, or their Deputies. Stat. 4 & 5 Ann. c. 23. P 3 It



1 Geo. c. 14. It shall be lawful for the Lieutenantcy, by the Order of his Majesty, to draw out the Militia into actual Service, although the Months Pay formerly advanced by the Country be not repaid. *Stat. 1 Geo. c. 14.*

Months pay And whereas it may happen that the entire Militia of a County cannot be assembled and got ready in so short a Part of the Time as necessity may require, 'tis hereby enacted, That Militia of any County or Place may be drawn out, and march such part of the Militia of any City, Town, or District, as they shall judge proper; and the Pay and Expence advanc'd by the Persons chargeable for such part of the Militia so employ'd, shall be repaid of the County, City, or Place, by an Assessment within six Months by such Persons chargeable to the Militia of any County, City, or Place, by an Assessment according to an equal Pound Rate, to be laid throughout the whole County, City, or Place to which they belong, for the bearing the Charge of such part of the Militia so called out, according to such directions as shall be given by the Lieutenantcy, and by the like Ways and Means as the Commissioners of the Land Tax for the present Year, are empower'd to levy the said Tax. *Ibid.*

Other Arms,  
&c. to be  
provided,  
than were ap-  
pointed by  
former Acts.

And whereas the Arms and Accoutrements directed to be provided by former Acts are become usefess, it shall be lawful for the Lieutenantcy to cause the several Persons chargeable to the Militia, to provide every Horse and Horseman a Broad Sword, a Case of Pistols the Barrells twelve Inches long, and a Carrabine, with Belt and Bukker, a great Saddle, or Pad with Burrs and Straps, a Bit and Bridle, with Pectoral and Crupper: And for every Foot Soldier a Musket the Barrell five Foot long, the Gage of the Bore for Bullets of twelve to the Pound, with a Bayonet to fix to the Muzzle, a Cattouch Box and Sword, under the same Pains, and by the same Ways and Means as the said Persons were to provide Arms by any former Acts. *Ib.*

Receivers of  
Trophy Mo-  
ney to account  
at the Quar-  
ter Sessions.  
And pay it to  
the Treasurer.

Provided that such Money as shall be raised for Trophy Money, shall be accounted for by the Receivers before the Justices of Peace at their Quarter Sessions, within twelve Months after the Receipt thereof; and the Ballance which shall be found due, within one Month next after, paid to the Treasurer appointed to receive the same, on pain of forfeiting treble the Sum unaccounted for or unpaid, one Moiety to the use of the County, City, or Place, as such Justices shall appoint, and the other to such Person as shall sue for the same by Action of Debt, Bill, Plaint, or Information in any of the Courts at *Westminster. Ibid.*

And

And such Person who shall be appointed Treasurer, to Treasurer to receive and pay the Monies to be levied by this Act for give Security. the use of the Militia, shall within three Months after such Appointment, give Security for the due execution of the said Office before three or more of the Deputy Lieutenants of the County, &c. as they shall approve. *Ibid.*

Provided that the Lord Warden of the Cinque Ports, Cinque Ports, and in his absence his Lieutenants, may put in execution there all the Powers granted by this Act, and execute all other Things therein contain'd, as the Lieutenancy of any County might do; and the Inhabitants of the said Ports shall not be charg'd with Arms or arm'd Men in the Counties adjacent for their Estates there lying, but for such proportion as they are liable to, and are not charg'd with within the said Ports. *Ibid.*

Provided that this Act shall not extend to take away *London*, any Right vested in the Lieutenancy of the City of *London*, of assessing and collecting Rates on the Inhabitants of the said City &c. *Ibid.*

Provided that this Act shall not extend to make any This Act to Person chargeable to the Militia not chargeable by Law, make no or to enlarge the Power of the Lieutenancy beyond the other alter Authority already given them by the Acts of the 13th, ration in the 14th, and 15th Years of King *Charles II.* relating to the Militia than Militia, but only in Cases expressly provided for by this what is above Act. *Ibid.* specified.

Provided also that the power of drawing out part of Power of raise the Militia of any County shall continue only for fiveing part of Years, and from thence to the end of the next Session of the Militia to Parliament. *Ibid.* continue for five Years.

## Mines.

EVERY Owner or Proprietor of any Mine wherein *W. & M.* Ore shall be discovered or wrought, and in which *c. 6.* Owners there is Copper, Tin, Iron, or Lead, shall enjoy the same, of the Soil to notwithstanding such a Mine or Ore shall be pretended or enjoy their claim'd to be a Royal Mine. *Stat. 5 W. & M. c. 6.* Mines, tho'

Provided that the Crown, and all Persons claiming un-claim'd as der it, may have the Ore of any such Mine, (other than Royal Mines. Tin Ore in *Devon* and *Cornwal*) paying to the Owner of the Provided the Mine within thirty Days after the said Ore shall be raised Crown pay and the Rates

herein men- and laid upon the Banks of the Mine, and before the same  
tion'd for the be remov'd from thence, the Rates following, viz.  
Ore.

For all Ore wash'd, made clean and merchantable,  
wherein is Copper, 16 l. per Ton.

For Ore wherein therein is Tin, 40 s. per Ton.

For Ore wherein therein in Iron, 40 s. per Ton.

For Ore wherein there is Lead, 9 l. per Ton.

And in default of Payment after the Rates aforesaid,  
the Owner of the Mine shall be at liberty to sell and dis-  
pose of the Ore to his own use. *Ibid.*

Provided that this Act shall not make void the Char-  
ters to the Tinnors of *Devon* and *Cornwal*, or alter any of  
their Laws and Customs. *Ibid.*

### Money and Plate.

9 Ed. 3. c. 1.

No Silver to  
be exported.

9 Ed. 3. c. 2.

No false Mo-  
ney imported.

**N**ONE shall carry any *Sterling* out of the Realm, or  
any Silver in Plate, or Vessel of Gold or Silver,  
without License, on pain of Forfeiture. *Stat. 9 Ed. 3. c. 1.*

No false or counterfeit Money shall be imported into  
the King's Dominion, on pain of Forfeiture; but Foreign-  
ers may bring to the Exchanges, and no Place else, Bul-  
lion Silver in Plate or Vessels, and all manner of Silver  
Money not counterfeit, and there receive convenient Ex-  
change. *Stat. 9 Ed. 3. c. 2.*

9 Ed. 3. c. 3.

No small Mo-  
ney to be  
melted down.

No *Sterling* Farthing or Halfpenny shall be molten, on  
pain of Forfeiture and Imprisonment. *Stat. 9 Ed. 3. c. 3.*

The counterfeiting the King's Coin, or importing false  
Money made in imitation of *English* Money knowingly,  
declar'd to be High Treason. *Stat. 25 Ed. 3. c. 2.*

25 Ed. 3. c. 13.

The Coin not  
to be im-  
pair'd.

Money of Gold and Silver shall not be impair'd in  
Weight or Allay. *Stat. 25 Ed. 3. c. 13.*

25 Ed. 3. c. 20.

Plate to be  
receiv'd by  
Weight at the  
Mint.

Gold and Silver shall be receiv'd by the Wardens of the  
Mint by Weight, and not by Number, and shall be so re-  
turn'd. *Stat. 25 Ed. 3. c. 20.*

27 Ed. 3. c. 14.

Money may  
be imported.  
Subjects may  
take Foreign  
Coin,

Merchants may import into this Realm Plate of Silver  
and Billets of Gold, and Gold and Silver Money, and at  
our Exchanges take the value in our Gold and Silver Coin.  
*Stat. 27 Ed. 3. c. 14.*

And if any Person will take Foreign Coin in payment  
he may, but he shall not be \*compell'd thereto. *Ibid.*

Provided that no Money be current within this Realm  
but the King's Coin, and that none export old *Sterling* or  
other, but our new Money of Gold and Silver, except

\* But may refuse it,

that



that Merchants Strangers who import Money and imploy it Foreign Mer-  
within this Realm, may export this Money, provided he chants may  
carry no more Money beyond Sea than he imported: And export half  
all false Money shall be forfeited to the King. *Ibid.* their Money.

None shall export Gold or Silver in Plate or Money, 38 Ed. 3. c. 2.  
but Fishermen and those that import Fish. Stat. 38 Ed. 3. None to ex-  
c. 2. port Gold or

No Groat or half Groat shall be molten to make a Silver.  
Vessel or other Thing, upon the Pains mention'd in the 17 Ri. 2. c. 1.  
9 Ed. 3. c. 3. Stat. 17 Ri. 2. c. 1. No small Sil-

If any of the King's Searchers find Gold or Silver in ver to be  
Coin or Mass, in the keeping of any that are passing be-melted.  
yond Sea, such Gold or Silver shall be forfeited to the 2 H. 4. c. 5.  
King, saving what shall be necessary for their reasonable Gold and Sil-  
Expences. Stat. 2 H. 4. c. 5. ver carrying

Provided that Foreign Merchants who sell their Mer- beyond Sea  
chandize within this Realm, and lay out one half of the forfeited.  
Money here, may export the other half of the Money re- Foreign Mer-  
ceiv'd. *Ib.* chants may

It was by this Act first made Treason to clip, wash, or export half.  
file the King's Coin, but this was repeal'd by the 1 Ed. 6. 3 H. 5. c. 6.  
c. 12. Stat. 3 H. 5. c. 6. Treason to

The Lords of the Council are impower'd to appoint clip or coun-  
Mints for coining of Gold and Silver, and to hold Ex- terfeit the  
changes in as many Places of the Kingdom as they shall Coin.  
see fit. Stat. 1 H. 6. c. 1. 1 H. 6. c. 1.

No Gold or Silver shall be carried out of the Realm, Mints ap-  
unless to pay the King's Forces beyond Sea, on pain of pointed by  
forfeiting double the value, of which the Informer shall the Council.  
have a fourth Part, except the Ransome of Prisoners, and 2 H. 6. c. 6.  
the Money that Soldiers carry with them for their own No Gold or  
Expences by the King's License; and Merchants Aliens Silver to be  
shall give security in Chancery not to carry any Gold or exported on  
Silver out of the Realm; and if any of them do, the pain of For-  
Pledges of the Company to which he belongs shall pay the feiture.  
Forfeiture. Stat. 2 H. 6. c. 6. Security not

The Master of the Mint shall keep his Allay according to export it  
to his Indenture, and shall receive the Silver brought to by Merchants  
the Mint at the true value according to the same Allay, Strangers.  
on pain of double Damages to the Party griev'd. Stat. 2 H. 6. c. 12.  
2 H. 6. c. 12. Mint Rules.

No Goldsmith, or worker of Silver in London, shall sell 2 H. 6. c. 14.  
any Workmanship of Silver unless it be as fine as Sterling, No Work-  
except the Sordering, for which allowance shall be made; manship of  
nor shall they set any Silver Harness to sale within the Silver to be  
said City before it be touch'd and mark'd with a Work- fold that is  
man's Mark, on pain of forfeiting double the value, and not as fine as  
such Mark shall be known to the Wardens of the Craft; Sterling, and  
and mark'd.

On pain of  
forfeiting  
double the  
value.

and if the keeper of the Touch, shall touch any such Silver Harness with the Leopards Head, except as it be as fine as *Sterling*, he shall forfeit double the value to the King, and also Damages to the Party griev'd. *Stat. 2 H. 6. c. 14.*

Several Touches and Marks for several Cities.

And in the Cities of *York, Newcastle upon Tyne, Lincoln, Norwich, Bristol, and Coventry*, there shall be divers Touches according to the Ordinance of their respective Mayors, &c. and no Goldsmith, or workers of Silver, or keeper of the Touches in the said Towns, shall set to sale or touch any Silver, otherwise than is appointed in the City of *London*, on pain of Forfeiture aforesaid; nor shall any Goldsmith, or worker of Silver in *England*, where no Touch is ordain'd, work any Silver except it be of as fine Allay as *Sterling*, and the Workers Mark be set upon it, on pain of forfeiting double the value, as is appointed in *London*. And Justices of Peace are empower'd to hear and determine the Offences aforesaid, by Bill, Plaint, &c. *Ibid.*

Justices of  
Peace to try  
these Offences.  
Mint Master.

Provided that the Mint Master offending in his Office, shall be punish'd or justified according to the Purport of his Indentures. *Ibid.*

4 H. 7. c. 2.  
Silver and  
Gold to be  
sold only to  
the Mint, or  
to Gold-  
smiths.  
Molten Silver  
allay'd, not  
to be sold on  
pain of For-  
feiture.  
Fineness of  
Silver.

No finer of Gold and Silver, shall Allay any fine Silver or Gold, or sell it to any other Person but to the Officers of the Mint, Changers, or Goldsmiths, for augmentation and amending of Coin and Plate, for which fine Gold or Silver they shall receive the value after the Rate of Fineness; nor shall any Finer sell to any Person any manner of Silver in mass, molten, and allay'd, on pain of Forfeiture, one half to the Crown, and the other to the Informer. And if any Finer sell any manner of fine Gold and Silver, otherwise then is appointed by this Act, he shall forfeit the value so allay'd or sold, the one Moiety to the Crown, and the other to the Informer. And all Silver shall be made so fine that it may bear twelve penny Weight in Allay, and yet be as good as *Sterling*: And every Finer shall put his Mark on such fine Silver, on pain of forfeiting the value, one half to the Crown, and the other to the Informer. And no Goldsmith shall melt or allay any fine Silver, except for making of Ammils for Goldsmiths Work, or for amending of Plate to make it as good as *Sterling*. *Stat. 4 H. 7. c. 2.*

Fine Silver not  
to be melted.

Or sold in the  
mass.

On pain of  
Forfeiture.

Nor shall they sell fine Silver, or other Silver allay'd, molten into mass to another Goldsmith, or any other Person whatever, on pain of forfeiting the same, or the value thereof one half to the King, the other to the Informer. *Ibid.*

No Bullion, Plate, or Coin shall be carried into *Ireland*, 19 H. 7. c. 5.  
 nor no *Irish* Coin imported into *England*, on pain of double No Coin to  
 Damages to the Party griev'd. Stat. 19 H. 7. c. 5. be exported or

If any Person shall forge and counterfeit any Foreign imported to  
 Gold or Silver Coin made current by the Queen, or shall or from *Ire-*  
 falsely forge or counterfeit the Sign Manual, Privy-Signet, land.  
 or Privy Seal, the Offenders, their Counsellors, Procurers, 1 Mar. c. 2.  
 Aiders and Abettors, shall be adjudg'd guilty of High Counterfeit-  
 Treason. Stat. 1 Mar. c. 2. ing Foreign

The clipping, washing, rounding, or filing for Lucre Coin made  
 fake, the Money or Coin of this Realm, or the Money current, Trea-  
 of any other Realm made Current by Proclamation, shall son.  
 be adjudg'd High Treason in the Offender, his Counsel- 5 Eliz. c. 11.  
 lors, Consenters, and Aiders, who shall forfeit all their Clipping and  
 Goods and Chattels, and their Lands during Life. Stat. filing the  
 5 Eliz. c. 11. Coin Treason.

Provided that this Act shall not extend to create any No corrupti-  
 corruption of Blood, or loss of Dower to the Wife. *Ib.* on of Blood.

If any Person shall forge or counterfeit any Foreign 14 Eliz. c. 3.  
 Gold or Silver, not made Current within this Realm, he Counterfeit-  
 shall be adjudg'd guilty of Misprision of Treason; and ing Coin not  
 such Offenders, their Procurers, Aiders, and Abettors, current, Trea-  
 shall be imprison'd, and forfeit such Lands, Goods, and son.  
 Chattels, as in Cases of Misprision of Treason for con-  
 cealment of High Treason. Stat. 14 Eliz. c. 3.

If any Person shall for Lucre fake, by any Act, Ways, 18 Eliz. c. 1.  
 or Means whatsoever, impair, diminish, falsify, scale, or Diminishing  
 lighten the proper Money of this Realm, or the Money of the Coin any  
 any other Realm, suffer'd to be current here by Procla- way Treason,  
 mation, he shall be adjudg'd guilty of High Treason, as  
 also his Counsellors, Consenters, and Aiders; and shall  
 forfeit their Goods and Chattels, and their Lands and  
 Tenements during their Lives. Stat. 18 Eliz. c. 1.

Provided that no Attainder by this Act, shall cause  
 any corruption of Blood, or loss of Dower. *Ibid.*

No Goldsmith shall work, sell, exchange, or cause to 18 Eliz. c. 15.  
 be wrought, sold, or exchange'd, any Plate or other Gold- Fineness of  
 smiths Ware, of Gold of less fineness than of two and Gold.  
 twenty Carrats; nor shall use any other Ammel or Stuf-  
 fings in his Work then are necessary for finishing the  
 same; nor shall take above the Rate of twelve Pence for Profits of the  
 the Ounce of Gold, besides the Fashion, more than will Goldsmith in  
 be allow'd for the same at the Queen's Exchange or Mint, Gold Ware.  
 on pain to forfeit the value of the Thing sold or ex- Profit in Sil-  
 chang'd; nor shall he make, sell, or exchange any Plate Profit in Sil-  
 or Goldsmiths Ware of Silver, less in fineness than that ver.  
 of eleven Ounces two penny Weight; nor take above  
 twelve Pence for every Pound Weight of Plate or Silver  
 Ware,



Not to sell  
Plate un-  
mark'd, on  
pain of For-  
feiture.

Wardens for-  
feit the value  
if they mark  
faultry Ware.

Ware, besides the Fashion, more than the Buyer can be allow'd at the Queen's Mint; nor shall put to sale or exchange any Goldsmiths Work before it is mark'd, on pain of forfeiting the value so sold or exchange'd: And if any Goldsmiths Work shall be touch'd, mark'd, and allow'd for good by the Wardens of the Company, and found faulty, the said Wardens and Corporation of that Mystry shall forfeit the value of the Thing so exchange'd or sold, one Moiety to the Crown, and the other to the Party griev'd, to be recover'd in any Court of Record, by Action, Bill, Plaint, Information, or otherwise. *Stat. 18 Eliz. c. 15.*

14 *Car. 2. c. 31.*  
Melting down  
the Coin.

Forfeit of it,  
and double  
value.

Whereas by the 9 *Ed. 4. c. 3.* no *Sterling* Halfpenny or Farthing shall be molten to make Vessel or other Thing, on pain of Forfeiture. And by the 17 *Ri. 3. c. 1.* no Groats or Half Groats shall be molten under the same pain: And whereas divers Persons do elude the said Statutes by melting Silver Coins above the value of Groats, to the great diminution of the Silver Coin of this Realm, it is hereby enacted, That no Person shall wilfully melt, or cause to be melted, any current Silver Money, on pain not only of forfeiture of the same, but of the double value so melted, to be divided between the Crown and the Informer, who shall sue for the same by Action of Debt in the Courts of *W. J. m. i. s. t. e. r*; and that the Offender, if he be a Freeman of any Corporation, shall lose his Freedom, and be incapable of exercising the Trade of a Goldsmith or any other Mystry by virtue of the privilege of being a Member of such Corporation; and if such Offender be not a Member of such Corporation, he shall suffer 6 Months Imprisonment without Bail or Mainprize. *Stat. 14 Car. 2. c. 31.*

18 *Car. 2. c. 5.*  
Rules ob-  
serv'd where  
Bullion is car-  
ried to the  
Mint.

Every Person, whether Native or Foreigner, who shall bring any Foreign Coin, Plate, or Bullion of Gold or Silver in mass, molten or allay'd, or any sort of Manufacture of Gold or Silver into his Majesties Mint to be melted down and coin'd, shall have the same assay'd, melted down, and coin'd with all convenient speed, without any defalcation, diminution, or charge for Assaying, Coinage, or waste in Coinage; so that for every Pound Troy of Crown or Standard Gold brought in, there shall be deliver'd out a Pound Troy of current Coin of Crown or Standard Gold; and for every Pound Troy of *Sterling* or Standard Silver, a Pound Troy of the current Coin of *Sterling* or Standard Silver, and so proportionably; and for every Pound Troy of Gold or Silver that shall be finer upon Assay than Crown Gold or Standard Silver, there shall be deliver'd so much more than a Pound Troy as the same in proportion amounts to in fineness and value;

due; and for every Pound Troy of Gold or Silver that shall be courser than Crown Gold or Standard Silver, there shall be deliver'd so much less as the same shall fall short in Fineness or Value. And all Gold and Silver brought into the *Mint*, shall be assay'd, coin'd, and deliver'd out according to the Order of time it was deliver'd in, without any preference of one to the other, on pain, that the Officer of the Mint offending, shall be liable by Action of Debt, or on the Case, to pay the Value of the Gold and Silver brought in, and not enter'd and deliver'd according to this Act, with the Damages and Costs to the Party giev'd, and shall be forejudg'd of his Office.

*Stat. 18 Car. 2. c. 5.*

Provided that it shall be interpreted no undue preference, if the Officers of the mint shall deliver out any money coin'd to any person who shall come and demand the same, upon subsequent Entries before others, who do not demand their money in Order and Course, so as there be so much money reserv'd and kept for them. *Ibid.*

And the Master-worker of the mint, shall at the time Master work- of the delivery and entry of any Gold and Silver into theer to give a mint, give the bringer of it, a Bill under his Hand, de- Bill for Bulli- noting the weight, fineness and value thereof, and the on brought Day he receiv'd it. *Ibid.* into the Mint.

And no Confiscation, Forfeiture, Seizure, Attach- Money in the ment, Stop or Restraint whatsoever, shall be made of any mint not lia- Gold or Silver brought into the Mint to be coined, by ble to forfei- reason of any Embargo, Letters of Mark, or Reprisal, or ture, seizure, War with any Foreign Nation, or upon any other Ac- or attach- count whatsoever. *Ibid.* ment.

Whereas by a Statute of the 5 Hen. 4. it was made Fe- 1 W. & M. c. 30. lony to multiply Gold or Silver; and whereas since the Statute a- making that Act, divers persons have arriv'd to great gainst multi- Skill in melting and refining Metals and improving their plying Gold Ores, and extracting Gold and Silver out of the same, and Silver, re- but dare not exercise their Skill in England for fear of the peal'd.

said Statutes, it is hereby enacted, that the aforesaid Branch of the said Act shall be repeal'd. *Stat. 1 W. & M. c. 30.*

Provided that the Gold and Silver extracted by the a- Gold and Sil- foresaid Act be imploy'd to no other use but the encrease ver extracted of Monies, and brought to the Mint in the *Tower of Lon-* by Art, to be don, where they may receive the true Value of the Gold be brought in- and Silver extracted, according to assay or fineness there- to the mint. of; but such Metal shall be used and dispos'd in no other Place within their Majesties Dominions. *Ibid.* No Tin, Iron,

Provided that no Mine of Copper, Tin, Iron or Lead, or lead mines be adjudg'd a Royal Mine. tho' Gold and Silver may be deem'd Royal extracted out of them. *Ibid.* If mines.

6 & 7 W. 3. If any person shall at any one time or payment exchange, lend, sell, borrow, buy, receive or pay any broad Silver Money, or money unclipp'd for more than it ought by Law to go for, he shall forfeit 10 l. for every 20 s. more than it so exchange'd, lent, sold, &c. one moiety to the Crown, will go, for- and the other to the Informer, to be recover'd with Costs  
feit 10 l. by Action, &c. Stat. 6 & 7 W. 3. c. 17.

None to cast And no person shall cast Ingots or Bars of Silver in Imi-  
Ingots, on pain tation of *Spanish* Bars or Ingots, or stamp any Mark upon  
of Forfeiture an Ingot or Bar, like the *Spanish* Marks, on pain of for-  
and 500 l. feiting the Silver so cast and 500 l. for every Offence; one  
Moiety to the Crown, and the other to the Informer. *It.*

Pain of having And if any person shall buy or sell, and knowingly have  
Clippings of in his Custody, any Clippings or Filings of the currant  
Money. Coin, he shall forfeit the same, and also 500 l. for every  
Offence, and be imprison'd till payment, and shall be  
mark'd on the Right Cheek with a hot Iron, with the  
Letter R. *It.*

No Silver to And no person shall transport any molten Silver, but  
be exported such as shall be mark'd at *Goldsmiths Hall*, by some or one  
not mark'd at of the Wardens of the said Company, nor unless a Certi-  
*Goldsmiths Hall*, ficate be first obtain'd under the Hand of one of the said  
&c. Wardens, that Oath has been made before him by the  
Owner of such molten Silver, and also by one credible

And a Certi- Witnefs that the same is lawful Silver, and no part there-  
ficate that it of was the currant Coin of this Realm, or Clippings there-  
was not Coin of, or Plate wrought within this Kingdom; which Oath,  
or Plate the said Wardens are authoriz'd and requir'd to admini-  
wrought. ster, and to make such Certificate, and an Entry thereof  
*Gratis*, in a Book to be kept for that purpose. And if any  
person shall offer such molten Silver to be mark'd, and  
shall not be able to prove the same to be such lawful Sil-  
ver as aforesaid, then it shall be lawful for any of the  
said Wardens to seize and detain such molten Silver, un-  
til Oath and Proof shall be made as aforesaid. *It.*

On pain of And if any person shall ship any molten Silver not  
Forfeiture. mark'd, and without such Certificate, (which Certificate  
shall be shewn to the Commissioners of the Customs be-  
fore any Corket be granted for exporting such molten Sil-  
ver) it shall be lawful for the Officers of the Customs to  
seize such Silver so ship'd, one Moiety for the use of the  
Crown, and the other for the Officer so seizing the  
same. *It.*

Pain of Bro- And if any Broker not being a trading Goldsmith  
kers selling or Refiner of Silver, shall buy or sell any Bullion or  
Bullion. molten Silver, he shall suffer six Months Imprisonment  
for every such Offence, without Bail. *It.*



And for the better Discovery of Offenders, it shall be Search for  
lawful for one or more of the Wardens of the said Com- Bullion.  
pany, with two of the Court of Assistants within the  
Weekly Bills, and for two Justices of Peace of any Coun-  
ty or place without the Weekly Bills, to enter and search  
the House, Room, or Workshop, of any person suspect-  
ed of buying or selling unlawful Bullion; and in case he  
refuse to undergo such Search, the said Warden and As-  
sistants, and Justices with a Constable, may break open  
any Door, Box, Trunk, Chest, Cupboard, or Cabinet,  
for discovering such Bullion, and if any unlawful Bullion  
be found, they are requir'd to seize the same, and the  
person in whose Possession it is found, and bring the per-  
son (if within the Weekly Bills) before the next Justice of  
Peace, who upon Oath of such finding, may examine him And Exami-  
upon Oath (as the said two Justices without the Weekly nation.  
Bills may) whether the said Bullion is lawful Silver, and  
if it was not currant Coin or the Chippings thereof be-  
fore the melting, and if such suspected person shall not  
prove by his Oath, or the Oath of one credible Witness,  
that it is such lawful Silver as aforesaid, he shall be com-  
mitted to Prison, and the Bullion secur'd, and the Per-  
sons who can give Evidence concerning the same, bound  
over to prosecute. *It.*

And if such suspected person shall not upon his Trial Proof that it  
prove by one credible Witness, that the said Bullion was was not Coin  
lawful Silver, and not the currant Coin of this Realm, lies on the  
or Chippings thereof, he shall be found guilty on the In- Owner.  
dictment, and suffer Imprisonment six Months without  
Bail. *It.*

And whoever shall apprehend a person that has coun- 40 l. Reward  
terfeited the currant Coin of this Realm, or for Lucre or for appre-  
Gain, clip'd, wash'd, fil'd or diminish'd the same, or who apprehending a  
has imported any clipt, false, or counterfeit Coin, and Clipper or  
prosecute such Offender to Conviction, he shall receive of Coiner.  
the Sheriff of the County where the Conviction was, 40 l.  
(without Fee) within one Month after such Conviction  
and Demand thereof made by tendring a Certificate un-  
der the Hand of the Judge who try'd such Offender, cer-  
tifying the Conviction of such Traytor within the Coun-  
ty, and that such Traytor was taken and prosecuted by  
the person claiming the Reward. And if any Dispute be  
between the Persons apprehending and prosecuting him,  
the Judge shall by the said Certificate appoint the said  
Reward to be paid among the Parties claiming, in such  
Shares and Proportions as he shall think reasonable.  
And the Sheriff who shall make default in payment of  
the said Reward, shall forfeit to the Party griev'd double  
the

the Sum he ought to have paid, with treble Costs of Suit, to be recover'd by Action of Debt, &c. in the Courts at Westminster. *Ib.*

And the Sheriffs are impower'd to deduct in their Accounts, such Sums as they shall produce such Certificates and Receipts for: (other than the said double Sum and Costs) And if the Sheriff shall not have money enough in his Hands to reimburse himself, he shall receive the same out of the Treasury, on a Certificate of the Clerk of the Pipe to that effect. *Ibid.*

Person discovering his Accomplices to have his Pardon.

And if any person out of prison guilty of Clipping, Coining, &c. shall discover two or more persons guilty of the Crime, so as two or more of them be convicted, he shall have his Pardon for all such his Crimes committed before the discovery made: And if he be an Apprentice, he shall be a Freeman, and exercise his Trade, as if he had serv'd his full Term. *Ibid.*

Proof of Bullion shipp'd to lie on the Exporter that it is Foreign Bullion.

And if any Dispute arise about any Bullion shipp'd and seiz'd, whether it be *English* or *Foreign* Bullion, the Proof shall be upon the Claimer or Exporter, that the same is *Foreign* Bullion. *Ibid.*

And if any person enter or ship any Bullion allow'd by this Act, to be exported in any other Name than of the true Owner or Importer, the Exporter shall forfeit the same, or the Value thereof, one Moiety to the Crown, and the other to the Discoverer. *Ibid.*

7 & 8 W. 3. c. 19.

No Plate to be used in public Houses on pain of forfeiture.

From and after the 4th Day of May 1696, no person keeping any Inn, Tavern, Ale-house or Victualling house, or selling Wine, Ale, Beer, or any other Liquors by Retail shall publicly use, or expose to be us'd in his House, any wrought or manufactur'd Plate whatsoever, or any Utensil or Vessel thereof (except Spoons) on pain of forfeiting the same, or the full Value thereof, with full Costs to the Prosecutor. *Ibid.*

Any Press for Coinage may be seiz'd. and the Owner forfeits 500 l.

And to prevent the counterfeiting the new intended Coin, it is enacted, that if any person have in his Custody, any Press that may be made use of for Coinage, and shall before the 3d of May 1696, bring the same to the Mint in the Tower, he shall receive the full Value thereof with the Charge of Coinage: But if after the 3d of May 1696, any person shall have in his Custody any such Press, it shall be seiz'd for the King's Use, and he shall forfeit 500 l. one Moiety to the King, and the other to the Informer, to be recover'd by Action of Debt, &c. *Ibid.*

No Person to export molten Silver, without

And for preventing the melting down the Coin of this Kingdom, and Silver plate wrought here, after the last of March 1696, no person shall put on Shipboard any mol-

ten Silver or Bullion whatsoever, without a Certificate a Certificate from the Lord-Mayor and Aldermen of London (Oath ha- that it is Fo- ving been made before the said Court, by the Owner of reign Bullion, such molten Silver or Bullion, and also by two credible Witnesses, that the same, and every part thereof is Foreign Bullion, and no part thereof was the Coin of this Realm, or Clippings thereof, or Plate wrought in this Kingdom) which Certificate shall be given gratis, and shall contain the Names of the Owners of such Bullion, and the Witnesses, and the true Weight of such molten Silver and Bullion, an Entry of which Certificate shall be made by the said Court, and by the Commissioners of the Customs, and no Cocket shall be granted for exporting Bullion, without such Certificate. *Ibid.*

And if any molten Silver or Bullion shall be otherwise On pain of shipp'd, it shall be forfeited, one moiety to the King, and forfeiture, and the other to the Seizer; and the Owner of such Bullion double the Va- shall forfeit double the value, one moiety to the King, and lue. the other to him that shall sue or inform for the same: And the master of such Vessel (being a Subject) who shall suffer such Bullion to be put on Board him, shall Master of a forfeit 200 l. to him that will sue or inform for the same: Ship taking it And if he be a Commander of any of the King's Ships, on Board for- he shall forfeit 200 l. in like manner, loose his Employ- feits 200 l. ment, and be disabled to hold any Office, civil or milita- ry. *Ibid.*

And the Commissioners or Officers of the Customs, Custom house granting any Cocket for transportation of Bullion, with- Officers 200 l. out such Certificate, &c. as aforesaid, shall forfeit 200 l. and be incapable of any Office or Place of Profit or or Trust. *Ibid.*

And where any Bullion shall be seiz'd, or any Prosecu- Proof that it tion commenc'd in pursuance of this Act, the Proof that is Foreign Bul- the same was Foreign Bullion, shall lie upon the Owner; lion to lie on and for want of such Proof the Bullion in question shall the Owner. be taken to be molten Silver and Bullion, forfeited by this Act, and liable to the aforesaid Penalties. *Ibid.*

And whoever after the 4th of May 1696, shall take any Clipt money clipt money, shall forfeit double the Value to the Prose- prohibited. tutor, to be recover'd as the Forfeitures by an of Act this Parliament for remedying the ill state of the Coin, are direc- ted to be recovered. *Ibid.*

Guineas are hereby reduc'd to 22 s. and persons taking Guineas re- them at an higher Rate, are subjected to the pains provi- duc'd to 22 s. ded in an Act of this Parliament, for receiving and pay- ing Guineas, &c. at a higher Rate than in that Act is directed. *Ibid.*



8 & 9 W. 3. c. 26. After the 15th of May 1697, no Smith, Engraver, Founder, or other Person (except Persons employ'd in his Majesty's Mints, and for the use of the said Mints only, make or mend or Persons authoriz'd by the Treasury) shall knowingly any Die or make or mend, or begin or proceed to make or mend, or Tool for coining, except assist in the making or mending any Puncheon, Counter-puncheon, Matrix, Stamp, Die, Pattern or Mould of those employ'd Steel, Iron, Silver or other Metal, or of Spauld or fine ed by the Founder's Earth or Sand, or of any other Materials King's Mint. whatsoever, in or upon which there shall be made or

impress'd, or which will make or impress the Figure, Stamp, or Resemblance of both, or either of the sides or flats of any Gold or Silver Coin, Current within this Kingdom, nor make or mend, or begin or proceed to make or mend, or assist in the making or mending any Edging or Edging Tool, Instrument or Engine, not of common use in any Trade, but contriv'd for marking of Money round the Edges, with Letters, Gravings, or other Marks or Figures, resembling those on the Edges of Money coin'd in the King's Mint; nor any Press for Coinage, or any cutting Engine for cutting round Blanks by force of a Screw, out of flatted Bars of Gold, Silver, or other Me-

Nor shall buy or sell, hide or conceal, or with- or sell, or keep out lawful Authority or just Excuse, have in his Custody, any such Instruments. any of the said Puncheons, or other Instruments before- mention'd, on pain that they, their Counsellors, Procurers, Aiders and Abettors be adjudg'd guilty of High Treason. *Stat. 8 & 9 W. 3. c. 26.*

to the Principal and Accessory. And whoever shall without Authority, knowingly convey out of the King's Mints, any Puncheon, or other Instrument used in coining Money, such Offender, his Counsellors, Procurers, Aiders and Abettors, and all Persons receiving, hiding, or concealing the same, shall be adjudg'd guilty of High Treason. *Ibid.*

out of the Mint. And if any Person (other than those employ'd in the King's Mints, or authoriz'd by the Treasury) shall mark on the Edges of any Current Coin, or any of the diminish'd Coin of this Kingdom, or any counterfeit Coin, resembling the said Coin, with Letters or Gravings, or other Marks or Figures, like those on the Edges of Money coin'd in the King's Mints, such Offender, his Counsellors, Procurers, Aiders and Abettors, shall be adjudg'd guilty of High Treason. *Ibid.*

**Treason.** And if any Person shall Colour, Gild, or Case over with Gold or Silver, or with any Wash or Materials producing the Colour of Gold or Silver, any Coin, resembling the Current Coin of this Kingdom, or any round

**Roundblanks.** Blanks of base Metal, or of course Gold, or course Sil-

ver,

ver, of a fit size and Figure, to be coin'd into Counterfeit mill'd Money, resembling the said Gold or Silver Coin; or shall gild over any Silver Blanks of a fit size and figure to be coin'd into Pieces resembling the Current Gold Coin, every such Offender, his Counsellors, Procurers, Aiders and Abettors, shall be adjudg'd guilty of High Treason. *Ibid.*

And if any Puncheon, Die, or other Tool, Instrument, Coining tools or Engine, us'd or design'd for coining or counterfeiting may be seiz'd: Gold or Silver Money, or any part of such Tool or Engine shall be hid or conceal'd in any Place, or found in the House, Custody or Possession of any Person not imploy'd in the King's Mints, or having the same by some lawful Authority, it shall be lawful for any Person to seize the same, and he is oblig'd to carry them forthwith to some Justice of the Peace of the Place, to be by him secur'd, to be produc'd in Evidence against any Person prosecuted for such Offence; and after the same have been so produc'd, they shall forthwith, by Order of the Court where such Offender shall be try'd, or in Presence of the Justices of the Peace, in case there be no such Tryal, be And defac'd. totally defac'd and destroy'd. *Ibid.*

And where any counterfeit or diminish'd Coin shall be Clipp'd or produc'd in Evidence against an Offender, after Evidence counterfeit given, the Judge of the Court shall cause such Money to Money to be be cut to pieces in open Court, or before some Justice of cut by a Magistrate, and Peace, and then deliver'd to the Person to whom it belongs. *Ib.* restor'd.

Whoever shall blanch Copper for Sale, or mix blanch'd Copper with Silver, or knowingly buy or sell, or offer Copper. to Sale, blanch'd Copper alone, or mix'd with Silver, or Or dealing in it. shall knowingly or fraudulently buy, sell, or offer to Sale, any malleable Composition or mixture of Metals or Minerals, which shall be heavier than Silver, and look, and Or mixed Metals heavier than Silver, and wearing like Gold. touch, and wear like Standard Gold, but be manifestly worse than Standard; or shall take, receive, pay, or put off any counterfeit mill'd Money; or any milled Money whatsoever, unlawfully diminish'd and not cut in pieces, at Or dealing in base or diminished mill'd Money for a lower Rate or Value, than the same by its denomination was coin'd for, every such Offender shall be adjudg'd guilty of Felony. *Ibid.*

Provided that no Attainders for any Offence against this Act, shall cause any corruption of Blood or loss of Dowry: And Persons may be Indicted or Convicted for any Offence against this Act, by such like Evidence, and in such Manner and Form, as by Law is used against Persons counterfeiting the King's Coin. *Ibid.* No corruption, &c. Prosecutions.

Where tryable.

And all Offences against the 6 & 7 W. 3. to prevent counterfeiting and clipping the Coin, &c. may be heard and determin'd upon Indictment or Presentment, either in the King's Bench, or before Justices of Oyer and Terminer, or of Assize or Goal-delivery, and Prosecution for any Offence against this Act, must be within three Months. *Id.*

8 & 9 W. 3. c. 8.

Fineness of Plate settled, to be finer than Sterling money. How to be mark'd.

Plate not so fine, or not mark'd forfeited. Wardens marking faulty Plate forfeit the value.

After the 25th of March 1697, none shall work or make, or cause to be wrought or made, any Vessel, Plate or manufacture of Silver, less in fineness than that of eleven Ounces ten penny weight in every pound Troy; nor put to sale any Plate or manufacture of Silver, unless silver Wire or such things, as in respect of their smallness cannot be mark'd, until the same shall be mark'd as follows, viz. with the Worker's mark, express'd by the two first Letters of his Surname; the mark of the Goldsmith's Craft, which instead of the Leopard's Head and the Lyon, shall be a Lyon's Head erased, and the Figure of Britannia, and a distinct variable mark of the Wardens, signifying the Year such Plate was made. And all Plate and other manufacture of Silver put to Sale, contrary to this Act, shall be forfeited, or the Value thereof; one moiety to the Crown, and the other to the Prosecutor, to be recovered by Action, Bill, Suit, or Information in any Court of Record: And if any faulty Plate shall be mark'd, touch'd, or allow'd for good by the Wardens or Master of the said Mystery, they shall forfeit the Value of the Plate so deceitfully mark'd, one Moiety to the Crown, and the other to the Party griev'd, to be recovered as aforesaid. *Stat. 8 & 9 W. 3. c. 8.*

9 W. 3. c. 2. Hammer'd Silver Money put down.

No hammer'd Silver Coin shall be reputed the lawful Coin of this Realm, or be current either by weight or otherwise; nor shall the tender of such money be deem'd a lawful tender after the 10th of Jan. 1697. *Stat. 9 W. 3. c. 2.*

9 & 10 W. 3. c. 21.

Silver Money diminish'd or counterfeit may be cut.

It shall be lawful for any Person to whom any Silver Money shall be tender'd (whereof any piece shall be diminish'd otherwise than by wearing or that by the Stamp, Impression Colour, or Weight he shall suspect to be counterfeit) to cut, break, or deface such Piece; and if any Piece so cut, &c. shall appear to be counterfeit, the Person tendering the same shall bear the loss; but if the same be due Weight, and appear to be lawful Money, the Person who cut the same is requir'd to take it at the Rate it was coin'd for. *Stat. 9 & 10 W. 3. c. 21.*

Disputes about the goodness to be determined by the Mayor or Ju-  
ce.

And if any dispute arise whether the Piece be counterfeit, it shall be heard and finally determin'd by the Mayor, Bailiff, or other chief Officer of the City or Town where the Tender is made; and if the Tender is made out of a City or Town Corporate, then by the

next



next Justice of Peace: And the said Mayor, &c. are empowered to administer an Oath to any Person for determining any Questions relating to the said Piece. *Ib.*

The Tellers of the Exchequer, their Deputies and Clerks, and the Receivers General of the Kings Taxes or other Revenues, are hereby requir'd to cut, break, or deface every Piece of counterfeit or unlawfully diminish'd Silver Money that shall be tendred in payment to the use of the King, or for any Aids, Taxes, or other Revenue of the Crown. *Ibid.*

And the Tellers and Receivers General, and their respective Deputies and Clerks shall weigh in whole Sums, or otherwise all Silver Money by them receiv'd; and if the same or any Piece thereof, shall by the Weight or otherwise appear to be counterfeit or unlawfully diminish'd, it shall not be receiv'd by or from them in the Receipt of the Exchequer, or be allow'd them upon their respective Accounts. *Ibid.*

It is enacted that York, Exeter, Bristol, Chester and Norwich, shall be appointed for the assaying and marking of wrought Plate. *Stat. 12 & 13 W. 3. c. 4.*

And in every of the said Cities, the Goldsmiths, Silversmiths, and Plate Workers, who are Freemen of and inhabiting in the said Cities, and have serv'd an Apprentiship to the said Trade, shall be respectively incorporated a Company, and be call'd the Company of Goldsmiths of such City respectively: And are authoriz'd annually to chuse two Persons to be Wardens of the said Company in each of the said Cities respectively, which Wardens shall continue a Year and no longer, unless re-elected; and if any of the Wardens happen to die or remove within the Year, the Company shall chuse another within a Month afterwards. *Ibid.*

No Goldsmith, &c. in any of the said Cities, shall make any Silver Vessel, Plate, or Manufacture of Silver, less in fineness than the Standard; nor sell any Plate or Manufacture of Silver, made after the 29th of September, 1701. until it shall be mark'd as followeth, (*viz.*) with the Workers Mark, express'd by the two first Letters of his Sirname, and with the Lions Head eras'd and a *Britannia*, and with the Arms of the City wherein such Plate shall be assay'd and mark'd, and also with a Letter of a *Roman* Character, which shall be annually chang'd on the election of a new Warden, on pain that all Silver Vessels, Plate, &c. which shall be made or exposed to sale contrary to this Act shall be forfeited, one Moiety to the King, and the other to him that will sue for the same by Action of Debt, Bill, &c. *Ib.*

Receivers of Taxes to weigh Money. And not to be receiv'd unless weight.

12 & 13 W. 3. c. 4. Cities appointed for assaying and marking Plate. Goldsmiths incorporated.

And mark'd.

On pain of Forfeiture.

**Affay Master.** And there shall be a skilful Assayer elected by the said Company in each City, for whom it shall be lawful to detain eight Grains only from every Pound Troy of Silver he shall Assay, four Grains whereof shall be put into the Box of Diet, and the other four allow'd him towards his Waste and spillings in making the said Assays; and who immediately on his election shall take an Oath for the faithful discharge of his Office before the Mayor: And the Boxes wherein the Diet of such Plate as is tried by the Assayers shall be put, shall be lock'd with three different Locks, and the respective Keys be kept by the Wardens and Assayers of such respective Company, which Boxes shall at the Charge of each Company be convey'd annually (if requir'd by the Lord Chancellor to the Royal Mint of the Tower of London, and the said Diet therein contain'd shall be tried as the Pix of the Coin of this Kingdom is tried; and if there shall be found any deceit in the said Diets the Company shall forfeit 50 l. to be recover'd as aforesaid against such Company or any Member thereof, to be disposed off as aforesaid. And if any Plate shall be allow'd for good in which their shall be any deceit, the Assayer allowing it shall forfeit double the value of the Plate allow'd to be recover'd and dispos'd as aforesaid. *Ibid.*

**Goldsmiths** Every Goldsmith, Silversmith, or Plate-worker, who  
**to enter their** shall inhabit in any of the Cities aforesaid, or in any  
**Names.** other Place in this Kingdom where an Assayer is not appointed, before he takes upon him to exercise his Trade, shall enter his Name, Mark, and place of Abode with the Wardens of such Company where an Assayer is appointed, which the said Wardens shall do *gratis*; and if he shall not enter his Name, Mark, and place of Abode, or shall strike any other Mark on Plate but what is so enter'd, he shall forfeit double the value of the Plate, to be recover'd and disposed of as aforesaid. *Ibid.*

**Forfeiture for** Persons counterfeiting any Stamps appointed by this  
**counterfeiting** Act to be used by the said Wardens or Assayers, or any  
**Marks,** of the Stamps used by the Wardens of the Company of Goldsmiths of London, shall forfeit for every Offence 500 l. to be recover'd and dispos'd as aforesaid. *Ibid.*

**Goldsmiths** Every Goldsmith, &c. inhabiting in any Town or Place  
**dwelling** where there is no Assayer, shall first fix his Mark upon all  
**where there** Plate he shall make (except things too small to receive a  
**is no Assayer,** Touch) and shall then bring or send them to the Assayer  
**to send their** of some City, and the same shall be assayed according  
**Plate to some** to this Act; and if it shall be found to be of the fineness  
**Assayer.** of the Standard, it shall be mark'd by the Assayer, as he  
 is requir'd to mark the Plate of his Company; and shall be

be allow'd by the Owner a Sum not exceeding 6*d.* for every Pound Troy so assay'd : And if any Goldsmith, &c. shall make any Silver Plate or Manufacture of less fineness than the Standard, or shall put to sale, exchange, or sell any wrought Plate, &c. before it shall be assay'd and mark'd, he shall forfeit the said Plate or the value thereof, to be recover'd and disposed as aforesaid. *Ibid.*

The Prosecution of Persons offending against the eighth 1 *Ann. c. 9.* of *W. 3. c. 6.* by making or mending, or beginning or Persons of- proceeding to make or amend any Coining Tool or In- fending strument thereby prohibited, or by marking Money round against 8 *W. 3.* the Edges with Letters or Granings, may be commenced may be pro- at any time within six Months after the Offence commit- secuted with- ted. *Stat. 1 Ann. c. 9.* in 6 Months.

And the Town of *Newcastle upon Tine* is appointed a *Newcastle ap-* Place for the assaying and marking of wrought Plate, and pointed for for executing the other Powers mention'd in the said Act assaying of of 12 *W. 3.* And the Goldsmiths of the said Town are Plate. enacted to be incorporated in like manner as the Gold. And the smiths of *Tork, Exeter, Bristol, Chester, and Norwich,* are di- Goldsmiths rected to be incorporated, to be call'd by the Name of there incor- the Company of Goldsmiths of the said Town of *New-* porated. *castle upon Tine* ; and are enabled annually to chose two Per- sons to be Wardens of the said Company, to continue for one Year and no longer, unless re-elected ; and if either of the said Wardens happen to die, or remove out of the said Town, the Company shall within one Month after chuse another Warden. *Ibid.*

And all Silver Plate shall be mark'd with the Arms of Plate to be the said Town and other Marks, and be of the same fine- mark'd and ness, and assay'd and wrought in like manner as is ap- assay'd. pointed by the said Act of 12 *W. 3. c. 4.* And an Assay Master shall be elected and sworn, and perform all other Things, and be subject to the same Rules and Pains as are mention'd in the said Act, as fully to all Intents as if the said Town had been therein expressly mention'd. *Ib.*

Whereas for remedying the Inconveniencies arising by 6 *Ann. c. 30.* the different Rates at which the same Species of Foreign Silver Coins pass'd in the *British Plantations*, the Queen by her Proclamation, dated the 18th of *June, 1704.* did ascertain the Currency of Foreign Coins in manner follow- ing, viz. *Stat. 6 Ann. c. 30.*

Sevil Pieces of Eight, old Plate, 17 dwt. 12 gr. at	l.	s.	d.	q.	Rates of Fo- reign Coins in the Planta- tions.
Sevil Pieces of Eight, new Plate, 14 dwt.	0	4	6		
Mexico Pieces of Eight, 17 dwt. 12 gr.	0	3	7	1	
Pillar Pieces of Eight, 17 dwt. 12 gr.	0	4	6	3	
	Q 4				Peru



## MONEY and PLATE.

<i>Peru</i> Pieces of Eight, old Plate, 17 dwt.	l.	s.	d.	q.
12 gr. or thereabouts, ———	0	4	5	
Cross Dollars, 18 dwt. ———	0	4	4	3
Ducatoons of <i>Flanders</i> , 20 dwt. 21 gr.	0	5	6	
Ecu's of <i>France</i> , or Silver <i>Lewis</i> , 17 dwt. 12 gr.	0	4	6	
Crusadoes of <i>Portugal</i> , 11 dwt. 4 gr.	0	2	10	1
Three Guilder Piece of <i>Holland</i> , 20 dwt. 7 gr.	0	5	2	1
Old Rix Dollar of the <i>Empire</i> , 18 dwt. 10 gr.	0	4	6	
The Halfs, Quarters, and other Parts in proportion to their Denomination, And light Pieces in proportion to their Weight.				

And her Majesty did declare, that after the 1st of *January* then next following, no *Sevil*, Pillar, or *Mexico* Pieces of Eight, though of the full Weight of 17 dwt. and a half, should be taken or paid at the Rate of above six Shillings *per* Peice, for the discharge of any Contracts or Bargains; and that the Halfs, Quarters, and other lesser Pieces of the same Coin should be taken or paid in proportion; and the currency of all Pieces of *Peru* Dollars, and other Foreign Species of Silver Coin, whether of the same or baser Allay, should stand regulated according to their Weight and Fineness in proportion to the Rate before set for the Pieces of Eight of *Sevil*, Pillar, and *Mexico*, and that no Foreign Silver Coin should exceed the same proportion.

Penalty of taking or paying them above those Rates,

It is enacted that if any Person in any of the said Plantations, as well those under Proprietors as under her Majesty's immediate Government, should after the first of *May*, 1709. take or pay any of the said several Species of Foreign Silver Coins, mention'd in the said Proclamation, at a higher Rate than is thereby allow'd, he shall suffer six Months Imprisonment without Bail or Mainprize, and shall forfeit 10*l.* for every Offence, one Moiety to the Crown, and the other to the Prosecutor, to be recover'd with full Costs by Action of Debt, Bill, Plaint, or Information in her Majesty's Courts of Justice in the said Plantations, or in any of the Courts of Justice of the Charter or Proprietary Governments where the Offence is committed. *Ibid.*

Persons not compell'd to take these Coins.

Provided that no Person shall be compell'd to receive any of the said Species of Foreign Silver Coins at the Rates mention'd in the said Proclamation. *Ibid.*

Provided that this Act shall not extend to restrain her Majesty from settling the several Rates of the said Coins in such manner as by a Proclamation she shall appoint, or from giving the Royal Assent to any Law to be made in the

the said Plantations for settling the Current Rates of such Coins. *Ibid.*

The Act made in the 8th of W. 3. c. 26. for the better preventing the counterfeiting the Current Coin of this King, is made perpetual. *Stat. 7 Ann. c. 25.*

A Proclamation issued declaring that Guineas should be Current at no more than one and twenty Shillings, and half Guineas, double Guineas, and five Pound Pieces proportionally; that Broad Pieces of three and twenty Shillings and six Pence should be reduced to three and twenty Shillings, and those of five and twenty Shillings and six Pence to five and twenty Shillings, and smaller Pieces proportionably. *Ibid.*

7 Ann. c. 25.

The Act of the 8 W. 3.

made perpetual.

3 Geo. Proclamation for settling Guineas at 21 s.

and Broad Pieces proportionably.

READINGS.

Money, *Moneta*: *Legalis Moneta Angliae*, lawful Money of England, either Gold or Silver, is of two Sorts, viz. *English Money* coin'd by the King's Authority, or Foreign Coin made Current by Proclamation. In *French* Coin signifies a Corner, because anciently Money was square with Corners, as it is in some Places at this Day. 1 *Inst.* 207. b.

Money lawful what.

Coin from whence deriv'd.

The counterfeiting the King's Coin was Treason at Common Law. 2 *Inst.* 188 3 *Inst.* 16.

In the *Mirror*, c. 1. an Ordinance is recited, that no King of this Realm shall change the Money, or impair or amend the same, or make other Money than of Gold or Silver, without assent of Parliament. *Ibid.*

Whether the King can set a value on the Money.

By *Sa Monye*, the King's Money in the 25 *Ed.* 3. was only meant Money coin'd within this Realm; and therefore after this Statute if a Man had counterfeited the Money of another Kingdom, though it was Current within this Realm, it was not Treason 'till it was declar'd so by 1 *M.* and the 5th and 18 *Eliz.*

If any Man counterfeit the King's Coin contrary to the 25 *Ed.* 3. he shall only be drawn and hang'd, but not quarter'd according to the Judgment in Petit Treason; but the Forfeiture of Lands is as in other Cases of High Treason, for this Judgment for coining.

this Statute is but a Declaration of the Common Law, and by the Common Law the Offender was only to be drawn and hang'd; but a Woman who offended in that Case was to be burnt.

3 *Inst.* 17.

If one be attainted of diminishing the King's Coin upon any of the Statutes made in the Reign of Queen *Mary* and Queen *Elizabeth*, because it is High Treason newly made, the Offender shall have Judgment as in Cases of High Treason. *Ib.*

Importing  
false Money  
in what Cases  
High Treason.

Upon that part of the Statute of 25 *Ed.* 3. which prohibits the importing false Money into the Realm, Sir *Edward Coke* observes that it must be brought from a Foreign Nation, and not from *Ireland* or any other Place belonging to the Crown of *England*: And such Money must also be of a Similitude of the Money of *England*, and the bringer of it must also know it to be counterfeit: But if Money false or clip'd be found upon a suspected Person, he may be imprison'd 'till he can clear himself of the suspicion of importing it, &c. Lastly, An Offender must Merchandize therewith, or make Payment thereof to bring him within the danger of this Act of the 25 *Ed.* 3.

3 *Inst.* 18.

*Sterling*, from  
whence the  
Word is de-  
riv'd.

In the construction of the Statute of the 28 *Ed.* 1. c. 23. Sir *Edward Coke* has given several Opinions concerning the Derivation of the Word *Sterling*, and he enclines to think that the *Esterling* or *Sterling* Penny took the Name from the Workmen being *Esterlings*, that both Coin'd it and gave it the Allay. The *Esterling* Penny was first coin'd by the *Esterlings* in the Reign of *Hen.* 2. and Money of that Allay was counted the lawful Money of *England*: By this Act of 28 *Ed.* 1. twenty Pence of Silver made an Ounce, and twelve Ounces a Pound of fine Silver, and eleven Ounces of fine Silver and one Ounce of

Allay what.

Allay made a Pound. Allay is a Mixture of baser Metal than Silver or Gold, call'd in our Books false Metal; and if more Allay be put into the Money than is limited by the Indenture between the King and the Officers of the Mint, or they make



make it of less Weight than is thereby provided, it is High Treason. 2 *Inst.* 575.

The Ancient Current Silver was the Penny at The Penny, the making of this Statute of 28 *Ed.* 1. and was called, in *Latin Denarius, a numero Denario, quilibet enim Denarius, argenti valebat 10 Denarios aris*, and Penny in *English* comes of the Saxon Word Penny 5. *Ibid.*

Upon the saving in this Statute of the Rights The King's and Prerogatives of the Crown, Sir *Edward Coke* prerogative observes that the Council for the King in the Case as to the of the Mines held, that it belong'd to the King Coin. only to put a Value as well as the Impression on the Coin, which being done, the Coin was Current for so much as the King had limited: But he holds that by the Statute *de dimissione Denariorum anno 2 Ed. 1. Vet. Mag. Chart. fol. 167.* No Subject can be forc'd to take in buying or selling, or other payment, any Money made but only of lawful Metal, that is Silver or Gold according to the *Mirror*: And by the 25 *Ed. 3. c. 13.* it is accorded that the Money of Gold and Silver then Current should not be impair'd in Weight or Allay, but be put in the ancient State as in the *Sterling*, and herewith agrees the Statute of 9 *H. 5. Stat. 2. c. 6.* And by an Act not in print, *Rot. Parl. 17 Ed. 3. an. 15.* It is enacted that Silver shall be coin'd according to the old *Sterling* in Poize and Allay, to be current among the Subjects. 2 *Inst.* 577. See the late Statute above recited for making Plate of a finer Standard than heretofore.

Error of a Judgment in Debt, where the Plain- In Debt tiff declar'd against the Defendant as Executor brought for to J. S. in Debt upon an Obligation, and de- Foreign Mo- mands 47 *l.* 8 *s.* 8 *d.*, *Moneta Flandriae attingent ad* ney, the *Valenciam* 40 *l.* 2 *s.* 6 *d.* The Defendant pleaded plaintiff *plene Administravit*, and found against him, and ought to ex- Judgment thereupon, *quod recuperet debitum præ-* press the value dictum, the Error assign'd was because it was not in his Decla- inquir'd by the Jury upon taking the Verdict, ration. nor by Writ to enquire of the value of the Money, and to give Judgment accordingly. But *Daniel,*

*Daniel*, Serjeant, mov'd, that it was well enough, and the value shall be intended to be as it is in the Declaration; and to that purpose cited a Precedent in the Book of Entries, fol. 157. and another Precedent in the Queen's Bench, *Hill. 32 Eliz. Rot. 637.* between *Dauidge* and *Wychalls*, where Debt was brought for 20*l.* and declares upon Sale for certain Pilchards for 22*l.* *Portugalia quæ attingunt ad Valenciam 20 l. legalis Moneta Angliæ*, and upon a *nihil dicit* had Judgment to recover the 20*l.* and it was much debated and argued, but all the Justices and Barons here held it to be Error; for the value of the *Flemish* Money is not known to us, no more then the value of twenty Quarters of Wheat, or the like, whereof the value is to be inquir'd, as 11 *H. 7. 5.* and 9 *Ed. 4. 49.* which is the reason that the Plaintiff in his Declaration ought to express the value thereof; but of Current Money here whereof the value is known it needeth not; and therefore the Judgment here ought to have been *quod recuperat 47 l. 8 s. 8 d. Flemish Money*, and a Writ have been awarded to enquire of the value thereof; and therefore as it is given it is erroneous, and for that cause the Judgment was revers'd, *Bagshaw v. Plain, Mich. 37 & 38 Rot. 504. 1 Cro. 536.*

Debt for 39*l. 12 s.* in the *Debet* and *Detinet*, for that he sold three Northern Cloaths for 66*l.* *Moneta Flandriæ adtunc Currant in Middleborough quæ quidem 66 l. Moneta Flandriæ tempore emptio- nis, &c.* amounted to 39*l. 12 s.* *Angliæ solvend*, upon request, and that he had not paid the 39*l. 12 s. unde Actio, &c.* the Defendant pleaded *non Debet*, and found for the Plaintiff *quod debet*, and Damages assess'd to 12*d.* and Costs to 53*s. 4 d.* and it was mov'd in arrest of Judgment that the Declaration was not good, for he ought to have made his Demand according to his Contract, viz. 66*l. Moneta Flandriæ attingent*, to so much of *English* Money; for otherwise if he demanded so much *English* Money, it doth not appear to the Court but that it may be more than so much

of

of *Flanders* Money will amount unto, and if he should have Judgment according to his Demand the Defendant might be prejudiced, for he cannot traverse the value alledg'd: Also the Jury upon the Tryal ought to have enquir'd of the value of the Money, so as the Court might know how to give certain Judgment. And although in original Writs pursued out of *Chancery*, the Course is to demand so much of *English* Money, that is, because they have another Form in the *Chancery*; yet in such Cases the Declaration ought to be special, to demand so much of *Flemish* Money, amounting to so much of *English* Money, and the Judgment shall be according to the Declaration, to recover the Money as he declares *vel valoriem inde*, which shall be tried by a Jury what it is, *vide* 9 *Ed.* 4. 49. 34 *H.* 6. 12. and 11 *H.* 7. 5. where Debt was brought for five Quarters, *frumenti ad valerem*, five Marks, the Judgment was to recover *frumentum*, or the value 21 *Ed.* 4. 38. *Book of Entry* fol. 157. and 37 and 38 *Eliz.* Rot. 524. in *B. R.* betwixt *Bagshaw* and *Playn*, where Debt was brought for 47 *l.* 8 *d.* *Moneta Flandriae* attingent to 40 *l.* 2 *s.* *English* Money against an Executor, he pleaded *plene administravit*, and found against him, the Judgment was that the Plaintiff should recover *debitum predictum*, and Error being brought in the *Exchequer* Chamber, Judgment was there reversed, because the Jury did not enquire of the value of the *Flemish* Money, nor that a Writ was awarded to enquire of the value, and the Court might not know the value, and they would not believe the surmise of the Party; but notwithstanding these Reasons the Court gave Judgment for the Plaintiff, for they held no difference betwixt an Action brought by original Writ and by a Bill, but in both the Plaintiff shall demand the Sum according to the *English* Money; and if he demands it otherwise then it is in truth, the Defendant may therein plead in Abatement, and so help himself; and the Verdict having found that he ow'd so much as he demanded, there ought not to



to be any further enquiry of the value, wherefore it was adjudg'd for the Plaintiff, *Draper v. Rastal, Pasch. 44 Eliz. Rot. 2 Cro. 88.*

*Indebitatus Assumpsit* for 13*l.* 10*s.* for 9 Guineas, held to be well laid.

In case upon four several Promises, there was a Verdict for the Plaintiff, and intire Damages: It was mov'd in arrest of Judgment that one of the Promises was ill laid, *viz.* That whereas the Defendant was indebted to him in 13*l.* 10*s.* for nine Guineas he promised to pay, &c. and says not nine Guineas *ad valorem*, &c. as he ought, the value being not ascertain'd by Proclamation. *Et per Holt, Chief Justice:*

First, Any Piece of Money coin'd at the Mint, is of value as it bears a proportion to other Current Money; and that without Proclamation the Unit was the old Piece, which was 20*s.* In King *James I.* Time, the Unit was by Proclamation raised 16*d.* which was the reason and occasion of the Coin of Guineas, and of their being 16*d.* short of the Unite.

Secondly, There are Guineas 40*s.* a piece, and so we will intend these were, and that the Plaintiff was satisfied the rest.

Thirdly, That it was not necessary to set forth the number of the Guineas, for in an *Indebitatus Assumpsit* the Consideration is only set forth to shew it was not a Debt by Bond, &c. *Dixon v. Willoughs, Mich. 8 W. 3 B. R. 2 Salk. 446.*

## Monopolies.

2 Jac. 1. c. 3.  
Grants of  
Monopolies.

**A**LL Monopolies, Permissions, Grants, Licence, Charters and Letters Patents granted to any Persons, Body's Politick or Corporate, for the sole buying, selling, making working or using of any thing within this Realm, or of any other Monopolies, or Power, or Liberty, to dispence with any others, or to give Licence to do, use, or exercise any thing against the Tenor of any Law or Statute, or to give any Warrant for such Dispensation or Licence; or to agree or compound with any others,

for

for any Penalty limited by any Statute, or of any Grant Or Fines be-  
of the Benefit of any Forfeiture, or Sum of Money that fore Judgment  
shall be due by any Statute before Judgment thereupon void.

had : And all Proclamations, Inhibitions, Restraints,  
Warrants of Assistance, and all other things whatsoever,  
tending to the instituting, erecting or furthering the  
same, shall be void. *Stat. 21 Jac. 1. c. 3.*

And all Monopolies, Grants, Charters, and other Mat- Such Grants  
ters relating to them, shall be try'd at common Law, and to be try'd at  
not otherwise. *Ibid.* common Law.

And all Persons, Bodies Politick and Corporate, are  
disabled to use or exercise any Monopoly, Grant, Char-  
ter, or any Liberty or Power grounded on any of them.  
*Ibid.*

And if any Person be aggrieved or disturb'd, or his Persons di-  
Goods or Chattels attached, distrain'd or taken away, sturb'd by  
on Pretence of any Monopoly, Grant, &c. he shall have Monopolies,  
his Remedy at common Law, by an Action grounded on to have treble  
this Statute, and recover treble Damages and double Damages and  
Costs. *Ibid.* double Costs.

And if any Person shall procure an Action grounded Procuring an  
on this Statute, to be staid or delay'd before Judgment Inhibition to  
by virtue of any Order. Power, or Authority, except of the Courts at  
the Court where such Action is depending ; or after Judg- Law a Præ-  
ment, shall cause Execution to be staid, by the Means a-munire.  
fore said, he shall incur a Præmunire. *Ibid.*

Provided that this Act shall not extend to Letters Pa- Except Pa-  
tents, and Grants of Privilege for the Term of 14 Years, tents for new  
to be made of the sole working or making of any new Inventions.  
Manufactures within this Realm, to the true and first  
Inventor, so as they be not contrary to Law, or mische-  
vous to the State. *Ibid.*

Provided that this Act do not extend to any Warrant Not to extend  
or Privy-Seal, to be made or directed to the Justices of to Courts, but  
the Courts of King's Bench or Common Pleas, and Ba- they may still  
rons of the Exchequer; Justices of Assize of Oyer and compound  
*Terminer* and Goal Delivery ; Justices of Peace and other Fines.  
Justices, having Power to try Offences against any Penal  
Statute, to compound for the Forfeitures of any Penal  
Statute depending before them, after Plea pleaded by  
the Defendant. *Ibid.*

Provided that this Act do not extend or be prejudicial Nor to  
to the City of London, or any City. Borough, or Town Towns Cor-  
Corporate, concerning any Grants, Charters, or Letters porate, as to  
Parents granted to them, concerning any Customs us'd their Charters  
by any of them ; or unto any Corporations, Companies or to Compa-  
or Fellowships of any Art, Trade, Occupation or My- nies in Corpo-  
rations, or to any Companies or Societies of Merchants ere-  
cted

Or Companies created for the maintenance, enlarging or ordering of any of Merchants Trade or Merchandize. *Ibid.*

Or to Patents for Printing. Provided also, that this Act do not extend to any Letters Patents, or Grants of Privilege to be made of, for or concerning Printing, or to any Commission, Grant, or Letters Patents concerning the digging, making or compounding of Salt-petre, or the making of Ordnance, or Shot for Ordnance; or concerning the digging, compounding, or making of Allum, or Allum Mines, but that the same shall remain of the like Force and Effect as heretofore, and no other; nor to the Liberties of *Newcastle upon Tyne*, or to the selling, shipping, venting or trading for any Coals there; nor to any Grants concerning the Licensing of any Tavern, or the selling or re-tailing Wines, or the making Compositions of such Licences. *Ibid.*

Or Salt-petre or Gun-powder.

Or Allum. *Newcastle.*

Or to the licensing Taverns, &c.

2 W. & M. Sect. 2. c. 9. Brandy. Letters Patents for the sole making of Brandy or Spirits from Malted Corn, &c. as a new Invention, are declar'd void.

## READINGS.

Monopoly defined. A Monopoly is an Institution or Allowance by the King, by his Grant Commission, or otherwise to any Person or Persons, Bodies Politick or Corporate, of, or for the sole buying, selling, making, working, or using of any thing, whereby any Person or Persons, Bodies Politick or Corporate, are sought to be restrain'd of any Freedom or Liberty that they had before, or hindred in their lawful Trade. 3 *Inst.* 181.

Against the antient Law of the Realm. Monopolies, Sir *Edward Coke* observes were against the antient and fundamental Laws of the Realm, and are so declar'd in the Preamble of the abovesaid Statute of 21 *Jac. c. 3.* and that as the obtaining and procuring them was punishable formerly, so it is much more since that Statute. *Ibid.*

The Proviso for new Inventions how restrain'd. As to the Proviso concerning the Privilege of new Manufactures, this as Sir *Edward Coke* observes, must have seven Properties or Qualifications: *First*, it must be for the Term of 14 Years or under: *Secondly*, it must be granted to the first and true Inventor: *Thirdly*, it must be of such Manufactures, which any other at the making of such Letters Patents did not use; for



for albeit it were new invented, yet if any other did use it at the making of the Letters Patents or Grants of the Privilege, it is declar'd or enacted to be void by this Act: *Fourthly*, the Privilege must not be contrary to Law; such a Privilege as is consonant in Law, must be substantially and essentially newly invented; but if the Substance was in *Esse* before, and a new Addition thereunto, though that Addition make the former more profitable, yet it is not a new Manufacture in Law; and so was it resolv'd in the Exchequer Chamber, *Pasch. 15 Eliz. in Bircot's Case*, for a Priviledge concerning the preparing and melting, &c. of Lead Ore; for there it is said, that that was to put but a new Button to an old Coat; and it is much easier to add than to invent: And there it was also resolv'd, that if the new Manufacture be substantially invented according to Law, yet no old Manufacture in use can be prohibited: *Fifthly*, nor mischievous to the State, by raising of Prices of Commodities at Home: In every such new Manufacture that deserves a Priviledge, there must be *urgens Necessitas & evidens Utilitas*: *Sixthly*, nor to the Hurt of Trade; this is very material and evident: *Seventhly*, not generally inconvenient: There was a new Invention found out heretofore, that Bonnets and Caps might be thickn'd in a fulling Mill, by which Means, more might be thickened and full'd in one Day, than by the Labours of fourscore Men, who got their Livings by it. It was ordain'd, that Bonnets and Caps should be thickened by the Strength of Men, and not in a fulling Mill; for it was holden inconvenient to turn so many Labouring Men to Idleness. If any of these seven Qualities fail, the Privilege is declar'd and enacted to be void by this Act, and yet this Act, if they have all these Properties, sets them in no better Case than they were before this Act. 3 Inst. 184.

The third Proviso is, that this Act shall not Saving for extend, or be prejudicial to any Grant, Privi-Corporations ledge, Power or Authority heretofore made, in some In-granted, statutes.

granted, allow'd or confirmed, by any Act of Parliament now in Force, so long as the same shall so continue in Force: This was added, for that the City of *London* and other Cities and Boroughs, &c. have some Privileges for buying, selling, &c. by Acts of Parliament; for Example, the Stat. of 1 & 2 P. & M. giveth a Privilege to Cities, Boroughs, Towns Corporate, and Market Towns, for the Sale by Retail of certain Wares and Merchandizes, and some other Acts of Parliament in like Case. 3 *Inst.* 185.

Printing.

The fifth Proviso doth except out of the Purview and Penalty of this Statute four things, *but leaveth them of the like Force and Effect, and no other, as if this Act had never been made.* First, the Privilege concerning Printing, made or hereafter to be made: Secondly, Commissions, Grants and Letters Patents made, or hereafter to be made for or concerning the digging, making or compounding Salt-petre or Gun-powder: Thirdly, Or the casting or making of Ordnance, or Shot for Ordnance: Fourthly, Grants and Letters Patents heretofore made, or hereafter to be made, of any Office or Offices. *Ibid.*

Gun-powder.

Offices.

Such Offices as are erected against Law, are Monopolies and Oppressions of the People, and all taken away by this Act; and all new Offices that were not erected before this Act, are wholly prohibited; and all Offices that have been decryed (that is prohibited) by any Proclamation, cannot be granted. *Ibid.*

Cards.

Queen *Elizabeth*, by her Letters Patents, granted to *Darcy* the making of playing Cards, and the sole Importaion of all playing Cards into *England* for 21 Years; and further, by the said Letters Patents, prohibited that no other Person should buy, import or sell any playing Cards within the Realm, during the said Term. A Citizen and Freeman of the City of *London* sold a Gross of playing Cards made within the Realm; in this Case these Points were resolv'd: 1<sup>st</sup>, That the Grant of the sole making of playing Cards within the Realm was void, because it is a Monopoly,

monopoly,

nopoly, and that the sole Trade of any Mechanical Art, is a Prejudice to all the Subjects, and therefore the Grant of it is void. That the King cannot suppress the making of playing Cards within the Realm, any more than the making of Dice, Bowls, Bells, Bales, &c. which are Works of Labour and Skill, although they serve for Pleasure or Recreation, which cannot be suppress'd but by Acts of Parliament. 3dly, Resolv'd that the Dispensation or License to have the sole Importation and Merchandizing of Cards, is void and against Law; and in this Case it was said, that *privilegia qua revera sunt in præjudicium rei publicæ magis speciosa habeat frontispicia & boni publici prætextum quam bonæ & legales Concessionēs sed prætextu liciti non debet admitti illicitum.* 11 Co. 74. the Case of Monopolies.

A Grant of a Monopoly may be to the first Inventor, by the 21 Jac. 1. And if the Invention be new in England, a Patent may be granted, tho' the thing was practis'd beyond Sea before, the Statute speaks of new Manufactures within this Realm; so that if it be new here, it is within the Statute, for the Act intended to encourage new Devices useful to the Kingdom, and whether learned by Travel or by Study, it is the same thing; agreed by Holt and Pollexfen, in the Case of Edgberry and Stephens. 2 Salk. 447.

New Invention, though practis'd before beyond Sea.

As to a Patent for the sole printing of Law Books, Mr. Hawkins Vol. 1. p. 231. says, it seems to be the better Opinion, that the King may grant this Privilege and some others to particular Persons, because an unrestrained Liberty may be of dangerous Consequence, and the Authorities he cites are 1 Mod. 256. 3 Keb 792. and 3 Mod. 75. but neither his Authorities or his Reasons seem to carry any great Weight with them. As to the Case of the Company of Stationers against Seymour, which is most to his Purpose; the Action was brought against Seymour for printing an Almanack, which was there held to be the proper Copy of the Company of Stationers.

Patent for the sole printing of Law Books, whether more legal or more reasonable than a Patent for the sole printing any other Books.



tioners, only with some trifling Additions concerning the Weather, &c. Besides the Act of 13 & 14 Car. 2. against Printing without License was then in Force; as it was also when that Judgment in the House of Lords cited in that Case, was given against one who Printed a Law Book, from the Patentee.

But further it seems to be admitted by Serjeant *Pemberton*, who was of Council for the *Stationers* (nor was it ever deny'd by any) that a Patent or Grant to one Man, for the sole Printing of *all* Books, would be a Monopoly, and if so, the Question is, what sort of Books a Patent may be granted for the sole Printing of, and whether it may be more reasonable to grant it for the Printing of Law Books than any other. Now as to the *dangerous Consequence* of permitting it in this Case; is it not full as dangerous to give an unrestrain'd Liberty to the Printing of Books of Divinity, Physick, History and Politicks (which were all equally restrain'd by the Statute of the 13 & 14 Car. 2.) which prohibited the Printing of unlicens'd Books; and if so, then for ought I see, Printing in general may be restrain'd to this or that particular Man, and the rest of the Booksellers and Printers in *England* may be sent a grazing. In all Arbitrary Governments indeed, where Liberty and Property are but empty Sounds, the Liberty of the Press, as well as other Liberties is restrain'd: And the first Printer that went to *Constantinople*, was hang'd up, and all his Implements destroy'd: And in *Papish* Countries, one who Prints without License, will infallably be hurried to the Inquisition; but nothing like this can be fear'd in *Britain* while there is a Protestant Prince on the Throne.

To return: Is not the Printing Quack-Remedies destructive to our Bodies? The Printing of bad Divinity to our Souls, and the Printing Partial pieces of History and Politicks, as destructive to the Constitution, as the Printing the Laws relating to our private Rights can be; if so, then the Printing of History, Divinity, Politicks,

liticks, &c. may with equal or greater Reason be restrain'd, and the Printers and Booksellers Business will be reduc'd to a very narrow Compass: So that Mr. *Hawkins's* Argument drawn from the *dangerous Consequence* of allowing a general Liberty of printing Law Books, will extend a great deal further than he design'd it perhaps; and by endeavouring to prove too much, he will be found to prove nothing at all.

But further, the Patent for printing Law Books as it stands at this Day, does not at all prevent the Inconveniencies Mr. *Hawkins* would redress; for these Books are never perused by any of the Learn'd before they are put to the Press; and if the Maxims of *Tom Thum* or Doctor *Doolittle* came to their Press under the Title of Law, I dare undertake, the Patentees would make no scruple of printing them as such; therefore if it should be admitted to be reasonable that some learn'd Man of the respective Professions of Law, Divinity, and Physick, &c. ought to peruse every Book before it goes to the Press, this is far from being a Reason for establishing such a Patent as is contended for: If there be any dangerous Consequences to be apprehended, they must arise from the Books not being perus'd by a Man of Judgment, appointed by Authority, and not from the Printing them by this or that Man: For let the Book be first perus'd, and have the Sanction of an *Imprimatur*, the Printing will probably be better perform'd, and the Publick better us'd, where there are several Shops to go to, than where we are tied up to one; for in this last Case, whatever Hardships, or unfair Dealing we meet with, it may be difficult to find Redress.

Besides it will remain a doubtful Point, whether a general Liberty of the Press does not tend more to the advancement of Learning, the improvement of Arts and Sciences, and establishing just Notions of Men and Things, than those tyrannical Restraints that are laid upon the Press Abroad?

In a Country where the People are allow'd the Liberty of the Press, if a piece of bad Divinity, Quackery, partial or doubtful History shall appear, it will probably be animadverted upon, and the World will receive new Light from the various Arguments produced on each side; and how can we expect to arrive at Truth where Men plod on in one dull Road of Thinking, and never are suffer'd to read what has been said on both sides, or to exert their Faculties and examine into the reason of Things. How would the World have ever been improv'd, or Arts and Sciences cultivated, if every Generation had follow'd implicitly the Maxims of their Fathers, and never attempted to excel? How had Religion remain'd still buried in Superstition, and the Slavery of our Ancestors been entail'd upon us, if some great Men had not broke through the prejudices of Interest and Education, and by communicating their Thoughts to the World, advanced true Religion and Liberty to it's Primitive Lustre?

To proceed: In every Country there are Societies of Men whose Business and Interest it is to support their several Professions, and whose Education and Practice must infallibly render them a Match for any Pretenders: If they have Right and Reason of their Side, they will not fail to demolish their ignorant Adversaries: And if they have neither Right or Reason with them, it can never be to the prejudice of the Publick to see their stupid or selfish Practices expos'd: As to Political Writers let them take care, and reflect on the Administration at their Peril; they will not 'tis presum'd contend with the Government they live under: If an Author Libels the Ministry, they cannot want an opportunity of making him sensible of his Rashness, especially if it be true, that let the natural Construction of a Man's Words be what it will, if a Jury will take upon them to determine he meant amiss, he shall incur the guilt of Libelling: If this be, Law Writers will sure be cautious for their own Sakes, and publish nothing that may give offence, though  
they



they should never be denied the full liberty of the Press. I shall conclude this Head with the Preamble of the abovesaid Statute of 21 *Jac.* 1. c. 3. against Monopolies, which will sufficiently discover the Sense the Nation had of them in that Reign, *viz.*

Forasmuch as your most excellent Majesty in your royal Judgment, and of your blessed Disposition to the Weal and Quiet of your Subjects, did in the Year of our Lord God 1610. publish in print to the whole Realm, and to all Posterity, that all Grants and Monopolies are contrary to your Majesty's Laws, which your Majesty's Declaration is truly consonant and agreeable to the ancient and fundamental Laws of this your Realm: And whereas your Majesty was further graciously pleased expressly to command that no Suiter should presume to move your Majesty for Matters of that Nature, yet nevertheless upon Misinformations and untrue Pretences of publick Good, many such Grants have been unduly obtain'd and unlawfully put in execution to the great grievance and inconvenience of your Majesty's Subjects, contrary to the Laws of this your Realm, and contrary to your Majesty's most royal and blessed Intention so publish'd as aforesaid, for avoiding whereof, and preventing of like to come, may it please your excellent Majesty, at the humble Suit of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, that it may be declar'd and enacted by Authority of this present Parliament assembled; and be it declar'd and enacted by Authority of this present Parliament, that all Monopolies, and all Commissions, Grants, Licenses, Charters, and Letters Patents heretofore made or granted, or hereafter to be made or granted to any Person or Persons, Bodies Politick or Corporate whatsoever, of or for the sole buying, selling, making, working, or using of *any Thing* within this Realm, or the Dominion of *Wales*, or of any other Monopolies, or of power, liberty, or faculty to dispense with any  
R 4
others,

others, or to give license or toleration, to do, use, or exercise any thing against the tenor or purport of any Law or Statute, or to give or make any Warrant for any such Dispensation, License, or Toleration to be had or made, are altogether contrary to the Laws of this Realm, and so are and shall be utterly void and of none effect, and in no wise to be put in ure or execution.

### Mortmain.

9 H. 3. c. 36.  
None to alien  
their Lands  
to a religious  
House, and  
take the same  
again.

7 Ed. 1. None  
to alien their  
Lands in  
Mortmain, on  
pain of For-  
feiture.

13 Ed. 1. c. 32.  
The Country  
to enquire if  
the Deman-  
dant have a  
just Title.

15 Ri. 2. c. 5.  
Converting  
Lands into a  
Church-yard,  
Mortmain.

No Grant to  
be made to  
any spiritual

Person, on pain  
of Forfeiture.

**I**T shall not be lawful from henceforth to any to give his Lands to any religious House, and to take the same Lands again to hold of the same House, &c. upon pain that the Gift shall be void, and that the Land shall accrue to the Lord of the Fee. Stat. 9 H. 3. c. 36.

No Person, Religious or other whatsoever, Body Politick, Ecclesiastical or Lay, Sole or Aggregate, shall buy or sell any Lands or Tenements, or under the colour of Gift or Lease, or by reason of any other Title receive the same, or by any other Craft or Engine shall presume to appropriate them to himself, whereby such Lands may in any wise come into Mortmain, under pain of Forfeiture of the same; and within a Year after the Alienation the next Lord of the Fee may enter, and if he do not, then the next immediate Lord from time to time to have half a Year; and for default of all the Mesne Lords, the King shall have the Lands so alienated for ever, and shall enfeof others by certain Services. Stat. 7 Ed. 1.

It shall be enquir'd by the Country whether or no the Demandant had a just Title to the Land; and if so, then he shall recover Seisin; but if otherwise, the Lord of the Fee shall enter, &c. Stat. 13 Ed. 1. c. 32.

It is within the compass of 7 Ed. 1. *de Religiosis*, to convert any Land into a Church-yard without license of the chief Lords, though done by the sufferance and assent of the Tenants; and no Feoffments, &c. of any Lands and Tenements, Advowsons, or other Possessions, to the use of any spiritual Person, and whereof such spiritual Persons take the Profits, shall hereafter be made without license of the King and of the Lords, &c. upon pain of Forfeiture, &c. Stat. 15 Ri. 2. c. 5.

The same Law shall likewise be of Lands, Advowsons, and other Possessions purchas'd by Guilds, Fraternities and Corporations, or to their Use, *Ibid*,

Feoffments,

Feoffments, Fines, Recoveries, Devises, &c. of Lands, Tenements and Hereditaments in trust, to the use of Parish Churches, Chappels, Churchwardens, Guilds, Companies, &c. erected and made of Devotion, or by common Assent of the People without any Corporation, or to the uses and intents to have perpetual Obits. or a continual Service of a Priest for ever, or for threescore or four-score Years, or to such like uses and intents, to the prejudice of the King and to other Lords and Subjects; as in Case where Lands are alien'd in Mortmain, shall be utterly void. *Stat. 23 H. 8. c. 10.*

Provided that such Uses and Intents may be made and declar'd to continue twenty Years from the time of limiting them, and no longer. *Ibid.*

Owners of Improvements, Tythes, &c. may annex the same to the Parsonage or Vicarage where they lye, or settle them in trust for the Curates where the Parsonage is impropriate; and no Vicarage endow'd without any License of Mortmain. *Stat. 17 Car. 2. c. 3.*

And if the settled Maintenance of any Benefice with Cure, shall not amount to 100 l. per Annum clear, the Incumbent may purchase to him and his Successors, Lands &c. without License in Mortmain. *Ibid.*

It shall be lawful for the King to grant to any Person, Body Politick or Corporate, their Heirs and Successors, License to alien in Mortmain, in perpetuity or otherwise, any Lands, Tenements, Rents, or Hereditaments whatsoever, of whomsoever the same shall be holden, and they shall not be subject to any Forfeiture by reason of such Alienation or Acquisition. *Stat. 7 & 8 W. 3. c. 37.*

It shall be lawful for her Majesty, by Letters Patents under the Great Seal, to incorporate such Persons as her Majesty shall appoint, to be one Body Politick and Corporate; and by the same or any other Letters Patents, to grant to the said Corporations and their Successors for ever, all the Revenue of First Fruits and yearly perpetual Tenths of all Dignities, Offices, Benefices and Promotions spiritual whatsoever, to be applied to the Augmentation of the Maintenance of such Parsons, Vicars, Curates and Ministers officiating in any Church or Chappel in England, Wales, or Berwick, where the Liturgy and Rites of the Church of England, as now by Law establish'd, shall be us'd with such Powers, Rules, and Restrictions as shall be therein express'd. *Stat. 2 & 3 Ann. c. 11.*

And every Person having in his own Right any Estate or Interest in Possession, Reversion, or Contingency, in any Lands, Tenements, or Hereditaments, or any Property in any Goods or Chattel, shall have power by Deed inroll'd

The same Law if Lands be purchas'd by a Corporation. *23 H. 8. c. 10.* Grants of Lands to the use of Churches, &c. void.

Except Grants for 20 Years.

*17 Car. 2. c. 3.* Improprators may annex Glebe or Tythe to the use of the Church.

Incumbents may purchase if the Benefice be under 100 l. per Annum.

*7 & 8 W. 3. c. 37.* King may License any to alien in Mortmain. *2 & 3 Ann. c. 11.*

Queen Anne empower'd to grant the First Fruits and Tenths for the Maintenance of the poor Clergy.

Persons im-power'd to convey Lands or Goods to



the said Corporation for of Bargains and Sales, or by his last Will or Testament the benefit of duly executed, to give, grant, and vest in the said Corporation, and their Successors, all such his Estate, Interest, or Property in such Lands, Tenements and Hereditaments, Goods and Chattels, for the Augmentation of the Maintenance of such Ministers as aforesaid, to be applied according to the Will of the said Benefactor, in and by such Deed inrol'd, or by such Will, as aforesaid, express'd; and in default of such Appointment, in such manner as by her Majesty's Letters Patents shall be directed as aforesaid: And such Corporation shall have ability to purchase, take, and enjoy for the Purposes aforesaid, as well from such Persons so charitably dispos'd, as from all other Persons willing to sell or alien to the said Corporation, any Manors, Lands, Tenements, Goods, or Chattels, without any License or Writ of *ad quod dampnum*, notwithstanding the Statute of Mortmain, &c. *Ibid.*

## READINGS.

Mortmain  
defin'd.

Mortmain is where Lands are given to a religious House, or any other Corporation Sole or Aggregate; and is call'd Mortmain as coming into a dead Hand, because the Lords of the Fee could receive nothing of the Alienee any more than from a dead Hand, but lost their Escheats and Services before due to them, which occasion'd the Statutes of Mortmain, by virtue whereof the King or other Lord of whom the Land is holden may enter into the Lands so alien'd: But an Annuity granted to such Corporation is not forfeited, because it chargeth the Person only.  
*1 Inst. 2. b.*

Customs of  
Corporations  
not preju-  
dic'd.  
Lands may be  
given to the  
use of the  
poor, the  
Church,  
Highways,  
&c.

The abovesaid Statute of 23 H. 8. c. 10. does not prejudice Corporations where there is a Custom to devise Lands in Mortmain, as in *London*; nor does that Statute extend to any but superstitious Uses: But notwithstanding this or any of the said former Statutes, one may give Lands to any Persons and their Heirs to find a Preacher, maintenance of a School, relief of the Poor, or to repair Churches, Highways, &c. *11 Rep. 70.*

The

The Fryars Carmelites who had not any place of Habitation, obtain'd of J. S. who was seiz'd of ten Acres of Land holden of the Bishop of W. to have the said ten Acres of Lands to build a House upon for their Habitation; and because the said J. S. could not grant them the said ten Acres by reason of the Statute of Mortmain, he convey'd the said ten Acres to the King and his Heirs, whereby the Bishop Seigniorship was extinct, to the intent the King might grant the same to the said Fryars Carmelites, which the King did accordingly. It was adjudg'd in this Case that the King's Grant to the Fryars should be call'd in and cancell'd; for being to a religious Profession who had no House of Habitation, and so might seem to be a Work of Piety and Charity, yet the same was void, and the Letters Patents to them void. The Grant And the King could not be an Instrument to take away the Right of the Bishop; but in such Case if the King's License only had been granted to the said J. S. to have given the said ten Acres to erect a House upon for the Habitation of the said Fryars, and a Writ of *ad quod dampnum* had issued to inquire to whose prejudice it should have been, such Grant made by the said J. S. might have been good. *Vid. 17 Ed. 3. 59. 11 Co. 74. Magdalen College Case.*

---

### Mortuaries.

**N**O Parson, Vicar, Curate, or Parish Priest, or any other Spiritual Person, or their Farmers or Lessees, shall take or demand of any Person for any one dying, any Mortuary or Corse Present, or any Sum of Money or other Thing for the same, more than is hereafter mentioned; nor shall convent any Person before any Judge Spiritual for the recovery thereof, on pain of forfeiting this Act, the value of what they shall take or demand above the Sum limited by this Act, and also 40 s. to the Party griev'd. *Stat. 21 H. 8. c. 6.*

And it is ordain'd, that no Mortuary shall be taken or demanded of any Person, who at the time of his Death had not in moveable Goods the value of ten Marks: And that deceas'd do

not amount  
to 10 Marks,  
or where  
Mortuaries  
are not us'd  
to be paid.  
Where to be  
paid.  
The Sum to  
be paid.

To be paid  
for none but  
House-  
keepers.

Incumbent  
may take  
Things be-  
queath'd to  
his Church.  
No greater  
Sums to be  
paid than  
customary.

that no Mortuaries shall be demanded of any Person but in such Places where Mortuaries have us'd to have been paid; nor shall any Person pay Mortuaries in more Places than one, and that in the Place of their most usual Abode, and there but one Mortuary. And no Parson, &c. shall for any Person dying, who had above the value of ten Marks in moveable Goods after his Debts paid, and under the value of 30 l. take for the Mortuary above 3 s. 4 d. and for a Person having under the value of 40 l. 6 s. 8 d. or for any Person having Goods above the value of 40 l. above 10 s. *Ibid.*

Provided that for no Woman Covert, or Child, or any Person not keeping House, no Mortuary shall be paid; nor for any Wayfaring Man, or Person who did not dwell in the Parish where he died; but such Mortuary shall be paid in the place of his most usual Abode. *Ibid.*

Provided that it shall be lawful for any Parson, &c. to receive any Sum of Money or other Thing, which by any Person dying shall be bequeath'd to them, or to the Church. *Ibid.*

Provided that in such places where Mortuaries have been of less value than as aforesaid, no person shall pay any more for a Mortuary than has been accusom'd. *It.*

#### READINGS.

Mortuary de-  
fin'd.

Mortuary is that Beast or other Chattel moveable, which, after the Death of the Owner, by the Custom of some Place became due to the Parson, Vicar, or Priest of the Parish, in lieu or satisfaction of Tythes or Offerings forgot, or not well and truly paid by him that is dead. *Terms of the Law, verb. Mortuary.*

Mr. *Selden* tells us, that the usage anciently was to bring the Mortuary along with the Corps when it came to be buried, and to offer it to the Church as a satisfaction for the suppos'd negligence and omission the Defunct had been guilty of in not paying his Personal Tythes, and from thence it was called a Corse Present. *Selden History of Tythes* 287.

It hath been also held, that such a Right was vested in the Parson to have the second best Beast for a Mortuary (where by Custom it was due);  
that



that he might seize it wherever he could find it, 7 H. 6. 26. 16 H. 7. 5. And it was said by some, that since the Statute of 21 H. 8. c. 6. whereby Mortuaries are reduced to a certainty to be paid in Money, an Action of Debt will lie upon the said Statute in the Courts of Common Law for Recovery of a Sum due for a Mortuary; for although the Statutes be only in the Negative, yet it implies an Affirmative, that those Rates set down in the Statutes may be taken, where by Custom Mortuaries are due; so that the Statute has made it a Duty fix'd in the Party, and then by Consequence, the Law will give a proper Remedy for the Recovery of it: But such Actions having never been brought, it is held by Dr. *Watson*, they are still recoverable only in the Spiritual Court. *Watf. Incumb.* 475.

Only recoverable in the Ecclesiastical Courts.

Nufances.

THE Party griev'd shall have a Writ of Nufance as well against the Alienee of a House, Wall, &c. which is a Nufance, as against him that erected it; and when the Writ shall be against the Party himself that levied the Nufance, it shall be in this Form, (*viz.*) *Questus est nobis A. quod D. injuste, &c. levavit domum murum mercatum, &c. & alia que sunt ad Nocumentum, &c.* and if such Writ be sued against the Alienee of such Nufance, it shall be said, *Questus est nobis A. quod B. &c. levaverunt, &c.* Stat. *Westm.* 2. 13 Ed. 1. c. 24.

13 Ed. 1. c. 24. A Writ of Nufance given against the Alienee of a Nufance. Form of the Writ.

Writs of Nufance stil'd Vicontiels, shall be made out as heretofore, or in the Nature of Assizes, determinable before the Justices of one of the Benches, or before the Justices of Assize of the County or Place, at the Election of the Plaintiff. Stat. 6 Ri. 2. c. 3.

6 Ri. 2. c. 3. How such Writs shall be made out.

None shall throw into Ditches, Rivers, or other Waters, in or near any Cities or Towns, any Dung, Filth, Garbage, or Entrails of Beasts, or other Ordure, upon pain of being called by Writ before the Chancellor, at the Suit of any one that will complain, and of being punish'd at the Discretion of the Chancellor. Stat. 12 Ri. 2. c. 13.

12 Ri. 2. c. 13. No Filth to be thrown into Ditches, or Water near a Town.

REA-

## READINGS.

Nusances de-  
fin'd.

Nusances are either publick or private; common or publick Nusances are Annoyances in Highways, Bridges, or publick Rivers, disorderly Ale-houses, Bawdy-houses, Gaming-houses, Stages for Mountebanks and Rope-dancers, &c. Brew-houses or melting Houses for Candles; unlawful Cottages and Inmates, common Scolds, Eves-droppers, &c. And for all common and publick Nusances and Incroachments, and Annoyances in Highways, an Indictment lies, and the Offender shall be fin'd and imprison'd, but no Action of the Case will lie for them.

Private Nu-  
sances.

Private Nusances, are such as the stopping up anothers Lights, building a House so near me, that the Rain falls off of my Neighbours House upon mine; which in *London* is however justified by the Custom, where the Building is upon an old Foundation; and if a Brick-kiln, Hogsty, &c. are set up so near as to be offensive, an Action lies for the Party griev'd, but an Indictment will not lie for a private Nusance, nor will an Indictment be good if the Nusance is not laid to be, *ad commune nocumentum omnium legeorum Domini Regis*, and not to the Damage of private Persons, or of such a Town, &c. But where a Man has a particular Damage by a common Nusance, he may have an Action of the Case; as if a Pit be dug, or Blocks laid in a Highway, and I am hurt, or receive a particular Damage by them, there I may have an Action: And both in publick and private Nusances it is said, a Man may justify the removing them himself. If a Nusance be done in one County, and the Land to which the Nusance is done be in another County, the Plaintiff ought to sue several Writs of Assize of Nusance, &c. *F. N. B.* 183. And if a Man have a Way to his Land or House, and another stop the Way, the Party griev'd shall have an Assize of Nusance (or Action) for stopping such Way; and if a Fair or Market be set up, to the Nusance of

Justifiable to  
remove them.

of another, the Party griev'd, may have his Writ or Action. *F. N. B.* 184.

A common Play House may be a Nuisance, if it draw together such numbers of Coaches and People as prove inconvenient to the Neighbourhood ; but Play houses are not held to be Nusances in their own Nature, but only they become so by Accident. 1 *Hawk.* 198. Play-houses.

A Dove House is held not to be a Nuisance or Dove-house. indictable, but it is said, an Action of the Case will lie at the Suit of the Lord of the Manor, for erecting it. *Ibid.* 199.

It is a common Nuisance to divert part of the Rivers. Waters of a publick navigable River, whereby the Current is weakned ; and it has been held a Nuisance in a Town, to divide a House in a Town Inmates. for poor People to inhabit. *Ibid.*

And altho' one may justify the pulling down or destroying a Nuisance, as a new Gate or House erected in a Highway, or a House hanging over any Ground, yet no one can justify the doing more Damage than is necessary, or removing the Materials.

As to the Punishment of a common Nuisance, Punishment it has been observ'd already, that the Offender for a Nuisance may be fin'd and Imprison'd, and a Scold put into the Ducking-Stool, and a Person convicted of a Nuisance done to the King's Highway, may by the Judgment, be commanded to remove it at his own Costs. *Hawk.* 200.

Trespass for breaking his Close, and throwing In Justificati- Bricks and other Materials there lying *ergo con-* on by Abate- *fectionem Domus de novo erect.* into the Sea ; the ment of a Nu- Defendant shew'd it was a Nuisance, being a House sance, it need built a-cross the Way, and that he pull'd down not be shewn the Walls, &c. and they roll'd into the Sea. The that he did it Plaintiff demurr'd, and Judgment was given for with as little Damage as the Defendant : And 1<sup>st</sup>, the Court seem'd to could be. agree that the Trespass which is here justified is not the Trespass complain'd of, for that was throwing Materials there lying, this which is confess'd is pulling down a Wall. 2<sup>dly</sup>, That when *H.* had a Right to abate a publick Nuisance, was



he is not bound to do it orderly, and with as little Hurt in abating it as can be, and therefore was not answerable in this Case, for the rolling into the Sea. In the Case of *James* against *Hayward*, the Defendant might have open'd the Gate without cutting it down, yet the cutting was lawful: And the Court denied *Hill's* Case, 3 *Cro.* 384. that Matter of Aggravation need to be answer'd. But 3<sup>dly</sup>. the Court held, that the Declaration was repugnant and insensible, there could not be Materials towards the building of a House erect which is already built. *Lodic v. Arnold Mich. 9. W. 3. B. R. 2 Salk. 458.*

In case for stopping Lights, it must appear that the Lights are ancient.

In an Action upon the Case for erecting a Shed upon the Defendant's Ground so near the Plaintiff's House, that it stopp'd up his Lights; the Plaintiff declar'd, that he was possess'd of a House which had Windows, *per quas lumen inferebatur & inferri consuevit*. After Verdict for the Plaintiff, it was mov'd in Arrest of Judgment, that the House was not said to be an ancient Messuage; and the Defendant appear'd not to be a wrong Doer, for one may erect a Shed on his own Ground against another's Windows, if they are not ancient Lights. 3 *Cro.* 118. And all the Precedents of stopping Lights, have it either *antiquum Messuagium*, or *antiqua lumine*. 1 *Cro.* 325. *Pap.* 170. 2 *Cro.* 373. *Yelv.* 215. *Sed per Cur.* The Word *consuevit* imports, Usage time out of Mind; and we must intend after Verdict that Usage time out of Mind was prov'd, and so indeed it was in this Case, for otherwise the Jury could not have found for the Plaintiff. The Court seem'd to think this Declaration would not have been good upon Demurrer. *Rosewell v. Prior Mich. 10 W. 3. B. R. 2 Salk. 459.*

If one erects a House that stops my Lights. I may pull it down.

If *H.* builds a House so near mine that it stops my Lights, or shoots the Water upon my House or is any other way a Nuisance to me, I may enter upon the Owners Soil, and pull it down; and for this Reason only a small Fine was set upon the Defendant in an Indictment for a Riot, in pulling down some part of a House, it being a Nu-

Nu-

Nuisance to his Lights, and the Right found for him in an Action for stopping his Lights. *Dominus Rex v. Roswell. Hill. 10 W. 3. B. R. Ibid.*

In an Action upon the Case, for that the Plaintiff being seiz'd of an ancient House and Lights, the Defendant had erected, &c. whereby they were stopp'd, there was a former Recovery for this Erection, and this Action was for the Continuance; and the Case was, Tenant for Years erected a Nuisance, and afterwards made an under Lease to J. S. the Question was, whether after a Recovery against the first Tenant for Years for the Erection, an Action would lye against him for the Continuance after he had made an under Lease, & *per Cur.* it lies, for he transferred it with the original Wrong, and his Demise affirms the Continuance of it, and therefore ought to answer the Damage it occasions. *Roswell v. Prior. Hill. 13 W. 3. B. R. 2 Salk. 460.*

Lessee demises a Nuisance to an under Tenant, he remains liable to an Action as well as his under Tenant.

Indictment for keeping Hogs in some of the back Streets in London, *contra formam Statuti.* Mr. Whitacre mov'd to quash it, because the Swine are forfeited by the Statute, 2 W. & M. Sess. 2. c. 6. Sect. 20. Ergo no Indictment lies, at least not *contra formam Statuti*; he compar'd it to the Case of the Queen against Watson, which was an Indictment for keeping an Alehouse, and held not to lie, because there is another Remedy, *curia*, where a new Penalty is applied for a Matter which at common Law, was an indictable Offence; as in this Case, for keeping Swine in a City, which is a Nuisance, either Remedy may be pursued, but where the Statute makes the Offence, that Remedy must be taken which the Statute gives. *Domina Regina v. Wigg. Pasf. 4. Ann. B. R. 2 Salk. 460.*

Indictment for keeping Hogs in London. This was a Nuisance at common Law.

### Oaths.

Every Archbishop, Bishop, and every other Ecclesiastical Person, Officer and Minister, and every other Ecclesiastical Person Persons and

Temporal Officers to take the Oath of Supremacy. Person having Fee or Wages from the Crown, shall take the Oath of Supremacy, in this Act specified, on pain of forfeiting during Life, every Ecclesiastical and Spiritual Promotion, Benefice and Office; and every Temporal and Lay Promotion and Office which he hath solely at the time of such refusal, and the same shall be void, as if the Party were dead. *Stat. 1 Eliz. c. 1.*

And such Person refusing the said Oath, shall from thenceforth be disabled to retain or exercise any Office or other Promotion, which at the time of such refusal, he hath jointly with any other Person. *Ibid.*

And every Person who shall be promoted to any Archbishoprick or Bishoprick, or to any other Spiritual or Ecclesiastical Benefice, Promotion, Dignity, or Office, or shall be by the Crown preferr'd to any Temporal or Lay Office, Ministry or Service, before he shall take upon him the same, shall take the said Oath of Supremacy before such Persons as shall be lawfully authoriz'd to administer the same. *Ibid.*

On pain of being disabled and shall peremptorily and absolutely refuse to take the to hold any said Oath, shall be adjudg'd disabled to have the same Office or Promotion, Office, &c. or any other within the Dominions of this Crown. *Ibid.*

And every Temporal Person suing Livery or *Ouster le main* before, the same shall be sued forth and allow'd; and every Temporal Person doing Homage to the Crown, or receiv'd into the Service of it shall take the Oath aforementioned before the Lord Chancellor or Keeper, or such other Person as shall be appointed to administer the same. *Ibid.*

Persons taking Orders or Degrees to take this Realm, shall before he take such Orders, or be preferr'd to such Degree, take the said Oath before his Ordinary, Commissary, Chancellor, or Vice-chancellor, or their Deputies respectively. *Ibid.*

Offices of Inheritance. And if any Person having an Estate of Inheritance, shall obstinately and peremptorily refuse the said Oaths, and afterwards desire to take the same, he shall be vested, judg'd, and deem'd in like Estate and Possession of the said Office as he was before the said Refusal, and may use and exercise the same accordingly. *Ibid.*

5 *Eliz. c. 1.* As well all Persons as are appointed by the 1 *Eliz. c. 1.* to take the Oath therein set forth, as all other Persons who shall take Orders, or be promoted, preferr'd, or admitted to any Degree in any University within this Realm; and all Schoolmasters, and publick and private Teachers



Teachers of Children, and all Persons that shall take any Schoolmasters Degree of Learning in the Common Laws, as well utter and Persons Barristers, as Benchers, Readers, and Ancients in any of taking De- the Inns of Court; and all principal Treasurers, and such greees in the as be of the Grand Company of every Inn of Chancery; Common or and all Attornies, Prothonotaries, Philazers, Sheriffs, Es- Civil Law. cheators and Feoderies, and all other Persons who shall take upon them or be admitted to any Office in or be- Attornies and longing to the Common Law, or any other Law to be all other Of- us'd within this Realm or the Dominions thereof; and ficers in the all Ministers or Officers of any Court whatsoever, shall Courts of take the said Oath before their admission to such Office, Law to take Degree, &c. as aforesaid. *Stat. 5 Eliz. c. 1.* the said Oath.

And every Archbishop and Bishop shall have power to Persons im- administer the said Oath to any Spiritual or Ecclesiasti- power'd to cal Person within their proper Diocesses. *Ibid.* administer

And the Lord Chancellor or Keeper are hereby im- them. power'd, without further Warrant, to direct Commissions under the Great Seal to any Persons, authorizing them to administer the said Oaths to such Persons as shall be men- tion'd in the said Commissions. *Ibid.*

And if any Persons compellable by this or the said for- Refusers to mer Act to take the said Oath; or if any Person to incur a Pra- whom such Commissioners shall tender the said Oath munire. shall refuse to take the same, the Party refusing being thereof indicted or presented within one Year after such refusal, and convicted or attainted by Law, shall incur a Præmunire. *Ibid.*

And every Person authoriz'd to tender the said Oath, Certificate of shall within forty Days after such refusal as aforesaid, if the refusal in- the Term be then open, and if not, then the first Day to the King's- of the Term next following the said forty Days, make a Bench. Certificate under his or their Seals, of the Names, Places, and Degrees of the Refuser, and in default thereof shall forfeit 100*l.* to the Crown; and the Sheriff of the Offender may County where the King's-Bench shall sit, may impanel be indicted a Jury of the same County to enquire of such Refusals, where the which Jury may upon such Certificate and other Evi- King's-Bench dence in that behalf given them, proceed to indict the fits. Offender as they might do of any Offence against the Peace committed within the same County, of which the Jury is so impannell'd. *Ibid.*

And if any Persons appointed by this Act to take the Refusal on a said Oath, do three Months after the first Tender refuse second Tender a second time to take the same, he shall suffer such Pains, Treason. Forfeitures, Judgments, and Executions as is used in Cases of High Treason. *Ibid.*

- How the Oath shall be expounded.** Provided that the said Oath in the first of *Elizabeth*, shall be expounded in such manner as is set forth in an Admonition annex'd to the Queen's Injunction publish'd in the first Year of her Reign; namely to acknowledge in her Majesty no other Authority than what was challeng'd and us'd by King *Henry VIII.* and *Edward VI.* *Ib.*
- Members of Parliament to take the said Oath.** And every Person who shall be elected a Knight, Citizen, or Burgess, or Baron of the Cinque Ports to sit in Parliament, shall before he enter the Parliament House, or have any Voice there, take the said Oath before the Lord Steward or his Deputy. *Ibid.*
- Not extended to Peers.** This Act shall not extend to compel any Temporal Person of or above the Degree of a Baron to take the said Oath. *Ibid.*
- Who may be oblig'd to take the Oath on a second Tender.** Provided that no Person shall be compell'd to take the said Oath upon a second Tender, except he be an Ecclesiastical Person, or have a Charge, Cure, or Office in the Church, or such Person as hath any Office or Ministry in any Ecclesiastical Court, or such as shall wilfully refuse to observe the Orders and Rites for Divine Service used in the Church of *England*; after he shall be publickly by the Ordinary admonish'd to observe the same, or such as shall adversedly deprave by Words, Writings, or any other Act, the Rites and Ceremonies of the Church of *England*, or that shall say or hear private Mass prohibited by Law, but all such Offenders shall take the said Oath, or incur the Pains for not taking it, and no other. *Ib.*
- 3 Jac. I. c. 4.** Any Bishop in his Diocese, or any two Justices of the Peace (*quorum un.*) within their Jurisdiction out of Sessions, the Diocess, may require any Person of eighteen Years of Age, or or two Justices of Peace above, who is convicted of Recusancy (other than Peers) for not repairing to Divine Service according to Law, or to administer who shall not have receiv'd the Sacrament twice the Year the Oath of past, or any Person passing through their County or Liberty and unknown, who being examin'd by them upon Allegiance to Oath, shall confess or not deny themselves to be Recusants, or shall confess or not deny that they have not received the Sacrament as aforesaid, to take the Oath in any Person convicted of Recusancy. this Act specified; and if any such Person shall refuse to answer upon Oath to such Bishops or Justices examining them as aforesaid, or to take the said Oath so tender'd out of Sessions, the said Bishop or Justices may commit such Refuser to the common Goal until the next Assizes or general Quarter Sessions where the said Oath shall be again requir'd in the open Assizes or Sessions, and if the said Person, or any other Person whatsoever, other than Peers, shall refuse to take the said Oath, being so tender'd
- Persons refusing the Oath at the Assizes or Quarter Sessions to incur a Premunire.**

der'd at the Assizes or Quarter Sessions, he shall incur a Præmunire. *Stat. 3 Jac. 1. c. 4.*

Every Subject who shall go out of this Realm to serve Felony to any Foreign Prince or State, or who shall pass over the serve a Foreign Seas and there voluntarily serve any Foreign Prince or reign State, State, not having taken the Oath aforesaid, shall be adjudged a Felon. *Ibid.* not having taken the

The said Oath to be administer'd by the Customhouse or Oath. Controulers of the Port where the Party embarks. *Ib.*

The said Oath to be administer'd to a Peer by the Peers, Lords of the Privy Council, or any six of them, whereof of the Lord Chancellor, Lord Treasurer, or principal Secretary of State to be one. *Ibid.*

The said Oath to be administer'd in the Cinque Ports by the Lord Warden, or such others as shall be appointed by him. *Ibid.*

All Officers and Ecclesiastical Persons, Judges, chief Officers of Towns, Knights, Citizens, and Burgesses of All Officers Parliament, Doctors of Law, Advocates, and Proctors, and Ecclesiastical Persons Serjeants at Law, Gentlemen of the Inns of Court, Principal and Treasurer of the Inns of Chancery, Attornies, to take the Members of the University, Doctors and Practicers of Oath of Al-Physick, &c. shall take the Oath of Allegiance in the legiance. said Act of 3 Jac. 1. c. 4. specified before such Persons as in And Practicers of Law, this Act is express'd. *Stat. 7 Jac. 1. c. 6.*

And it shall be lawful for any of the Privy Council, Physick, &c. and for every Bishop in his Diocess, to require any Peer of A Bishop, or the Age of eighteen Years, or above, to take the said two Justices Oath; and for any two Justices of Peace of any County may require or Place (*quorum unus*) to require any Person of eighteen any Person to Years of Age, under the Degree of a Peer, to take the take the Oath. said Oath. *Ibid.*

And if any Person under the Degree of a Peer shall stand presented, indicted, or convicted of not coming to Church or not receiving the Sacrament before the Ordinary or any other having lawful power to take such Presentment or Indictment, or if the Minister, Petty Constables, and Churchwardens, or any two of them, shall complain to a Justice of Peace, and the said Justice shall find cause of Suspicion, he shall require such Person or Persons to take Persons re- the said Oath; and if any Person being eighteen Years of fusing the said Age shall refuse to take the said Oath duly tender'd ac- Oath to incur cording to this Statute, the Person authoriz'd to tender a Præmunire, the same shall commit the Offender to Goal 'till the next and be disa- Affizes or general Quarter Sessions; and if he shall there bled to hold refuse the said Oath, he shall incur a Præmunire, and be any Office, or disabled to execute any publick Place or Office, being no to practice Office of Inheritance or Ministerial Function, or to use Law or Phy- or sick.



or practice the Common Law, Physick, or Chirurgery, or the Art of an Apothecary, or any Liberal Science for Gain, until he shall have taken the said Oath. *Ibid.*

13 *Car. 2. c. 1.* If any Persons who maintain that the taking of an Penalty of re- Oath in any Case whatsoever, although before a lawful fusing to Magistrate, is altogether unlawful and contrary to the take a lawful Word of God, and shall wilfully and obstinately refuse to Oath before a take an Oath, where by Law they are bound to take the Magistrate. same, being duly tender'd, or shall endeavour to persuade any other Person to whom such Oath shall be duly tender'd to refuse the same, or shall by Printing, Writing, or otherwise, go about to maintain and defend that the taking an Oath in any Case is altogether unlawful, such Offender being convicted by Verdict of twelve Men, or his own Confession, shall forfeit a Sum not exceeding five Pounds for the first Offence, and a Sum not exceeding ten Pounds for the second Offence, to be levied by Distress and Sale, by Warrant from the Court where the Offender is convicted; and for want of a Distress, or for Non-payment within one Week after Conviction, he shall for the first Offence be committed to the common Goal or House of Correction for three Months, and for the second Offence six Months, without Bail or Mainprize, and be kept to hard Labour; and if any Offender shall be convicted a third time, he shall abjure the Realm, or it shall be lawful to his Majesty to order him to be transported to the Plantations. *Stat. 13 Car. 2. c. 1.*

Provided that if any Person after such Conviction shall take such Oaths, for the refusing whereof he stands committed, he shall be discharg'd from the said Pains. *Ib.*

13 & 14 *Car. 2.* No Person being a Peer shall be capable of serving as c. 3. Officers Lieutenant or Deputy Lieutenant, unless he shall before of Militia to six of the Lords, of the Privy Council, or such other take the Persons as shall be authoriz'd by his Majesty, take the Oaths of Al- Oaths of Allegiance and Supremacy, and the Oath in this legiance and Act mention'd that it is not lawful to take up Arms Supremacy, against the King, &c. *Stat. 13 & 14 Car. 2. c. 3.*

and the Oath And no Person under the Degree of a Peer shall act as that it is not Lieutenant, Deputy Lieutenant, Officer, or Soldier in the lawful to take Militia, unless he shall first take the said Oaths of Allegiance and Supremacy, and the said Oath that it is not up Arms against the lawful to take up Arms against the King, &c. *Ib.*

King, All Parsons, Vicars, Curates, Lecturers, and others in 17 *Car. 2. c. 7.* Holy Orders, or pretended Holy Orders, &c. who shall Nonconform- not declare their Assent and Consent to the Book of Common Prayer, shall take and subscribe the Oath prescrib'd by this Act, that it is not lawful to take up Arms against the Oath that the King, or they shall not come within five Miles of any City

City or Corporation, on pain of 40 *l.* one Third to the it is not law- King, and another to the Poor, and the remaining Third full to take to him that will sue for the same. *Stat. 17 Car. 2. c. 7.* Arms against

All Officers Civil and Military, and Persons receiving the King's Salary, Fee or Wages, by any Grant from the Crown, or 25 *Car. 2. c. 2.* who shall have any Command, or Place of Trust in this All Officers to Kingdom, or in the Navy, or who are of the Household, take the Oaths shall take the Oaths of Allegiance and Supremacy. *Stat. 25 Car. 2. c. 2.*

And every Person continuing to exercise any such Office or Employment, not having taken the said Oaths, 500 *l.* &c. shall forfeit 500 *l.* and be disabled to sue in any Court, or to be Guardian, Executor or Administrator; and incapable of a Legacy or Deed of Gift, or to bear any Office in this Kingdom. *Ib.*

Provided that this Act do not extend to Constables Not to extend and other inferior Offices. *Ib.* to Parish Officers.

And all such Persons as are requir'd to take the said Oaths, shall likewise at the same time, subscribe the Declaration against Transubstantiation, specified in this Act, against Transubstantiation. under the like Pains and Disabilities as aforesaid. *Ib.*

The Declaration enjoin'd by this Act.

**I** A. B. do declare, That I do believe that there is not any Declaration Transubstantiation in the Sacrament of the Lord's Supper, or in concerning the Elements of Bread and Wine, at or after the Consecration Transubstantiation thereof by any Person whatsoever.

After the 1st Day of December 1678. No Peer of this 30 *Car. 2. c. 1.* Realm shall Vote, or make his Proxy in the House of No Peer or Peers, or sit there during any Debate; nor shall any Commoner to Member of the House of Commons, Vote or sit in that sit or vote till House during any Debate after their Speaker is chosen, unless he has taken till such Peer or Member shall first take the Oaths of Allegiance and Supremacy, and make and subscribe the Declaration against Transubstantiation and the Adoration of Saints in this Act contain'd: Which said Oaths and Declaration shall be made and subscrib'd between nine in the Morning and four in the Afternoon, by every Peer at the Table in the middle of the House of Peers, before he take his place, and whilst a full House is there with the Speaker in his place: And by every Member of the Commons at the Table in the middle of the House, while a full House is sitting, with the Speaker in the Chair; and this shall be done in either House in the Order each House is call'd over. *Stat. 30 Car. 2. c. 1.*

Peers, or Members coming into the King's Presence before they have taken the same, to incur the like Pains.

And of being adjudg'd Popish Recusants Convict.

Recusants may be licensed to come to Court.

And every Peer and Member of the House of Peers, and every Peer of *Scotland* or *Ireland*, being one and twenty Years of Age, not having taken the said Oaths, and made the said Declaration; and every Member of the Commons, not having taken the said Oaths and made the said Declaration; and every Person convicted of Recusancy, who shall come into the Presence of the King or Queen, or into the Court or House where they reside, shall incur all the Pains and Disabilities contain'd in this Act, unless such Offender do in the next Term after such his coming into the King's Presence, &c. take the said Oaths, and subscribe the said Declaration, in the Court of Chancery, between nine and twelve in the Forenoon, *Ibid.*

And if any Peer or Member of the House of Commons shall offend in any of the Cases aforesaid, he shall from thenceforth be adjudg'd a Popish Recusant Convict, and be disabled to hold any Office, or Place of Profit or Trust in this Kingdom, or *Ireland*, or the Dominions thereunto belonging: And shall be disabled to sit or Vote in either House of Parliament, or to make a Proxy, or to bring any Action, Bill, Complaint or Information, or prosecute any Suit in Equity, or to be Guardian, Executor or Administrator, or capable of a Legacy, or Deed of Gift, and shall forfeit for every wilful Offence against this Act, 500 *l.* to him that will sue for the same, by Action of Debt, Bill, Complaint, or Information, in any of the Courts at *Westminster*. *Ib.*

And where any Member of the Commons shall be disabled by this Act, to sit or Vote, the Place for which he is elected is declar'd void, without any further Conviction. *Ib.*

Provided that this Act shall not extend to prejudice any Person from coming into, or remaining, in the King or Queen's Presence, who shall be licensed so to do, by Warrant under the Hands and Seals of six Privy Counsellors, upon some urgent Occasion to be therein express'd, so as such License exceed not ten Days; and that the said License be first fil'd in the Office of the Petty Bag. *Ibid.*

Provided, that if any Offender shall take the said Oath and subscribe the said Declaration in the Court of Chancery, he shall be discharg'd of all Seizures, Pains and Losses which he might otherwise be liable unto, by being a Popish Recusant Convict, by Virtue of this Act, and shall be discharg'd from all Disabilities and Incapacities incurr'd thereby, but not to make void or discharge the said Forfeiture of 500 *l.* incurr'd as aforesaid. *Ib.*

The



The Declaration requir'd to be made by this Act.

**I** A. B. do solemnly and sincerely, in the Presence of God, profess, testify, and declare, That I do believe that in the Sacrament of the Lord's Supper, there is not any Transubstantiation of the Elements of Bread and Wine into the Body and Blood of Christ, at or after the Consecration thereof by any Person whatsoever; and that the Invocation or Adoration of the Virgin Mary, or any other Saint, and the Sacrifice of the Mass, as they are now us'd in the Church of Rome, are superstitious and idolatrous. And I do solemnly, in the Presence of God, profess, testify, and declare, that I do make this Declaration, and every Part thereof, in the plain and ordinary Sense of the Words read unto me, as they are commonly understood by English Protestants, without any Evasion, Equivocation, or Mental Reservation whatsoever; and without any Dispensation already granted me for this purpose by the Pope, or any Authority or Person whatsoever; or without any Hope of any such Dispensation from any Person or Authority whatsoever, or without thinking that I am or can be acquitted before God or Man, or absolv'd of this Declaration, or any Part thereof, although the Pope, or any other Person or Persons, or Power whatsoever, should dispense with or annul the same, or declare that it was null and void from the beginning. *Ib.*

The Statute of 1 Eliz. and 3 Jac. 1. requiring the taking of the Oaths of Allegiance and Supremacy, and every other Statute concerning the said Oaths, for so much only as concerns the said Oaths, and the said Oaths themselves, are hereby repeal'd and abrogated. *Stat. 1 W. & M. c. 8.*

The Oaths appointed by this Act to be taken, and the Declaration hereby appointed to be made, shall be taken and made by every Archbishop and Bishop, and other Person of or above the Degree of a Baron in the Courts of Chancery or King's Bench before the end of Trinity Term next, or at the general Quarter Sessions of the County where they reside before the first of August next. *Ibid.*

Every other Person required to take the said Abrogated Oaths, shall take the Oaths hereby appointed, and to take the said Declaration, before such Persons as were empowered to take the Abrogated Oaths. *Ib.*

And all Persons who shall hereafter be admitted into any Office or Employment, Ecclesiastical or Civil, except those concerning whom other Provision shall be made, or who were formerly obliged to take the said Abrogated Oaths, or either of them, shall take the Oaths hereby appointed, at such Times and Places, and in such manner

as

as the said Abrogated Oaths were appointed to be taken and under the like Pains, Forfeitures and Disabilities. *Ib.*

If any Person now being in Office or Employment, Civil or Military, neglect to take the Oaths hereby appointed, till the 1st of *August* 1687, (or sooner if requir'd by Order of Council) his Office and Employment shall be void. *Ib.*

If any Bishop or other Person, having any Ecclesiastical Dignity, Benefice or Promotion, shall not take the Oaths hereby appointed, before the 1st of *August* 1689, he shall be suspended for six Months, to commence from the said 1st of *August*; and if he shall not take them within that time, he shall be, *ipso facto*, deprived. *Ib.*

And if the Head or Fellow of any College, or the Master of any Hospital or School, or Professor of Divinity, Law, Physick, or other Science in the Universities, or in *London*, shall not take the said Oaths before the 1st of *August* 1689, he shall be suspended for six Months, and if he shall not take them within the space of six Months, his Office shall be void. *Ib.*

Penalty of refusing the Oath.

And if any such other Person and Persons (other than the Persons specially abovemention'd) shall refuse to take the said Oaths, or either of them, when tender'd by Persons lawfully authoriz'd as aforesaid, the Person tendring them, may commit such Refuser to the common Goal or House of Correction, for three Months, unless he pay down to the Person tendring them, such a Sum as he shall direct, not exceeding 40 *s.* to the Use of the Poor of the Parish to which the Refuser belongs: And if at the end of three Months he shall again refuse, he shall be committed as aforesaid, for the space of six Months, unless the Refuser pay down to the Person tendring them, such a Sum as he shall require, not exceeding 10 *l.* or under 5 *l.* to be dispos'd as aforesaid, and unless he find Sureties, for his good Behaviour, and to appear at the next Assizes, where if the Offender again refuse them, being tendred by the Judge of Assize, he shall be incapable of any Office Civil or Military, and remain bound to the good Behaviour till he take them; and if he refuse also to make the Declaration, in the 30 *Car. 2.* for the more effectual preserving the King's Person, &c. he shall be deem'd a Popish Recusant convict, and suffer as such. *Ib.*

Officers.

And all Commission and Warrant Officers in the Service, by Sea or Land, shall also take the said Oaths, and make the Declaration of the 30 *Car. 2.* before Persons authorized to administer them; and every Person hereafter to be admitted to any such Office, shall take the said Oaths, and make the said Declaration, before he receive his

his Commission or Warrant, and the Refusers shall be incapable of holding or executing such Office or Employment.

And further, that the Oath appointed by the 18 Car. 2. The Oath entituled, *An Act for ordering the Forces in the several Counties* that it is not of this Kingdom; and by another Act of the same Year for lawful to take the Uniformity of publick Prayers, &c. viz. up Arms against the

**I** A. B. do declare, That it is not lawful upon any Pretence King not to be requir'd. whatsoever, to take up Arms against the King; and I do abhor that traitorous Position of taking Arms by his Authority against his Person, or against those that are commission'd by him.

shall not be requir'd to be taken by any Person for the future. *Ibid.*

The Oaths appointed to be taken by this Act are as follows:

**I** A. B. do sincerely promise and swear, That I will be faithful and bear true Allegiance to their Majesties King William and Queen Mary. So help me God, &c.

**I** A. B. do swear, That I do from my Heart abhor, detest, and 1 W. & M. c. 8. abjure as Impious and Heretical, that damnable Doctrine and Oath of Supremacy. Position, that Princes excommunicated or depriv'd by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever.

And I do declare, that no Foreign Prince, Person, Prelate, State, or Potentate, hath, or ought to have, any Jurisdiction, Power, Superiority, Prebeminence or Authority Ecclesiastical or Spiritual, within this Realm. So help me God, &c.

And it is further enacted, That the Names of all Persons who shall take the said Oaths in the Court of Chancery, King's-Bench, or Quarter Sessions, shall be enroll'd in the respective Courts in Rolls kept only for that Purpose, to be inspected without Fee. And no Person shall pay above 12 d. for the entry of his having taken the said Oaths. *Ibid.*

And whereas the said abrogated Oaths requir'd to be taken by Officers elected into any Corporation could not be taken since the 11th of December 1688. by reason whereof such Offices are void, by an Act for the well Government of Corporations. It is enacted, That if such Officers shall take the Oaths hereby requir'd before the first of August, 1689. before the Persons who should have administer'd the said abrogated Oaths at their Admission, their said Elections shall be good,

If



If Persons admitted into Offices since *Michaelmas* last, who have not taken the said abrogated Oaths, and made the said Declaration requir'd by 30 *Car.* 2. shall before the end of *Trinity* Term, in the Chancery or King's Bench, or before the first of *August* in their respective Quarter Sessions, take the Oaths hereby requir'd, and make the said Declaration, and receive the Sacrament, and procure a Certificate thereof, as in the said Act is requir'd, they are hereby indemnified from all Pains and Disabilities incurr'd by the said Act, and are establish'd in their respective Offices. *Ibid.*

**King William** Provided that the King may allow to such of the Clergy as shall refuse the Oaths hereby prescrib'd, not exceeding twelve, a third part of their respective Benefices or Revenues for their Subsistence during his pleasure, and no longer. *Ibid.*

**impower'd to** allow twelve  
**Nonjurors a** third part of  
**their Reve-** nues.

1 *W. & M.* c. 18. The pe-  
nal Laws  
against Dis-  
senters sus-  
pended.  
On certain  
Conditions.

Neither the Statutes made the 1st, the 23d, the 29th *Eliz.* the 3d *Jac.* 1. or any other Statutes against Recu-  
fancy or requiring Persons to resort to their Parish Church,  
&c. except the Statute of the 25 *Car.* 2. for preventing  
dangers that may happen from Popish Recusants, and the  
30 *Car.* 2. for the more effectual preserving the King's Per-  
son, &c. shall be construed to extend to any persons dis-  
senting from the Church of *England* that shall take the  
Oaths of Allegiance and Supremacy enjoin'd by an Act of  
this Sessions, and make the Declaration requir'd by 30 *Car.*  
2. which Oaths and Declaration the Justices of Peace are  
requir'd to administer at their general Quarter Sessions to  
such persons as shall offer to take and subscribe the same,  
and shall keep a Register thereof, and 6 *d.* only shall be  
paid for entring, and 6 *d.* for a Certificate thereof. *Stat.*  
1 *W. & M.* c. 18.

**Constables,**  
&c. may con-  
stitute Depu-  
ties.

And if any person be chosen or appointed High Consta-  
ble, or to any Parochial or Ward Office, and scruple to  
take the Oaths requir'd, he may execute such Office by a  
sufficient Deputy that shall comply with the Laws. *Ib.*

Provided such Deputy be approv'd by the person as  
should have approv'd of the Officer himself. *Ibid.*

Provided the taking the said Oaths and Declaration,  
and subscribing the said Articles, be recorded at the Sessi-  
ons, for which 6 *d.* only shall be paid. *Ibid.*

**Penalties of a**  
**Dissenters re-**  
**fusing the**  
**Oaths.**

Any one Justice of Peace may require any Dissenter to  
make the said Declaration, and take the said Oaths or the  
Declaration of Fidelity hereafter mention'd, and on refu-  
sal thereof, he shall commit such Dissenter to Goal with-  
out Bail, and certify his Name to the next general Quar-  
ter Sessions; and in case of a second refusal at the Sessions,  
it shall be recorded there, and he shall be taken for, and  
liable

liable to all the Pains and Forfeitures of a popish Recusant convict. *Ibid.*

And those Dissenters who scruple the taking any Oath, Quakers, a shall make and subscribe the aforesaid Declaration, and provision for this Declaration of Fidelity following, viz. them.

**I** A. B. do sincerely and solemnly declare before God and the Their Affir-  
World, that I will be true and faithful to King William and mation.  
Queen Mary; and I do solemnly profess and declare, that I do  
from my Heart abhor, detest, and renounce as impious and here-  
tical, that damnable Doctrine and Position, that Princes excom-  
municated or deprived by the Pope, or any Authority of the See  
of Rome, may be deposed or murdered by their Subjects, or any  
other whatsoever.

And I do declare, that no Foreign Prince, Person, Prelate, State,  
or Potentate, hath, or ought to have, any Power, Jurisdiction,  
Superiority, Prebeminence, or Authority Ecclesiastical or Spiritual  
within this Realm. *Ibid.*

And shall subscribe this Profession of their Christian  
Faith, viz.

**I** A. B. profess Faith in God the Father, and in Jesus Christ, his Quaker's  
Eternal Son, the true God, and in the Holy Spirit, one God Creed.  
blessed for evermore: And do acknowledge the Holy Scriptures of  
the Old and New Testament to be given by Divine Inspiration.

Which Declarations and Subscriptions shall be recorded  
at the Sessions, and the Person making them shall be ex-  
empted from all the Penalties of the aforesaid Acts against  
Recusants and Nonconformists, and from the Penalties of  
5 Eliz. for assurance of the Queen's Power over all Estates,  
and from the Pains of 13 & 14 Car. 2. for preventing Mis-  
chiefs that may arise by Quakers, &c. and shall enjoy all  
the Benefits that any other Dissenter ought by this Act.  
*Ibid.*

Provided that if any Person shall refuse to take the said  
Oaths, when tender'd by a Justice of Peace, he shall not  
be admitted to make the said two Declarations, (though  
requir'd so to do either by a Justice of Peace or the Sessi-  
ons) unless he can within thirty one Days after the Ten-  
der of the Declarations to him, produce two sufficient  
Protestant Witnesses, who will make Oath that they be-  
lieve him to be a Protestant Dissenter, or a Certificate  
under the Hands of four Members of the Church of Eng-  
land who have taken the Oaths and subscrib'd the Decla-  
ration of 30 Car. 2. to the same effect, and shall produce a  
Certificate under the Hands and Seals of six sufficient  
Men

Men of the Congregation he belongs to, owning him for one of them. *Ibid.*

And until such Certificate under the Hands of six of the Congregation be produced, and two Protestants come to attest his being a Protestant Dissenter, or a Certificate under the Hands of four Protestants be produced as aforesaid, the Justice shall take a Recognizance of 50 *l.* with two Sureties for his producing the same; and if he cannot give such Security, he shall be committed to prison 'till he has produced such Certificate, or brought two Witnesses to make Oath that he is a Protestant Dissenter as aforesaid. *Ibid.*

7 & 8 W. 3. c. 24. Practicers at Law Attorney, Solicitor, Proctor, Clerk, or Notary, by practising in any Court whatsoever, not having first taken the Oaths of Allegiance and Supremacy requir'd by 1 W. & M. c. 8. and made and subscrib'd the Declaration of 25 Car. 2. for preventing Dangers that may happen from Popish Recusants, shall incur all the Pains, Penalties, and Forfeitures mention'd in the Statute of Provision and Premunire made the 16 Ri. 2. Stat. 7 & 8 W. 3. c. 24.

7 & 8 W. 3. c. 27. Person refusing the Oaths liable to the pains of Popish Recusants convicted. Whoever shall after the first Day of May, 1696. refuse to take the Oaths of Allegiance and Supremacy appointed by 1 W. & M. c. 8. or either of them when tender'd by Persons authoriz'd to administer them, or shall refuse or neglect to appear when lawfully summon'd to take them, shall until he have duely taken them be liable to all the Pains, Forfeitures, and Disabilities of a Popish Recusant convicted. Stat. 7 & 8 W. 3. c. 27.

To be certified to the Assizes. And the Persons so tendering the said Oaths, shall upon every such refusal or default of Appearance, record and enter in Parchment the Christian and Surnames, and Place of Abode of the Persons refusing or not appearing as aforesaid, together with the time of such tender and refusal or default of Appearance, and shall deliver and certify the said Record to the Justices of Assize, &c. at their next Session within the County, who shall estreat and certify the same into the Exchequer, to the end such Process may issue against the Lands and Goods of the Offender, as against a Popish Recusant convicted. *Ibid.*

And from  
thence into  
the Exche-  
quer.  
Quakers.

Quakers may subscribe their Declaration of Fidelity requir'd by the 1 W. & M. c. 18. instead of the aforesaid Oaths. *Ibid.*

Nonjurors not to vote at Elections. And no Person refusing to take the said Oaths of Allegiance and Supremacy, shall be admitted to vote at an Election of Members to serve in Parliament. *Ibid.*

After



After the 4th of May, 1696. every Quaker who shall 7 & 8 W. 3. be requir'd on any lawful occasion to take an Oath, shall c. 34. Quaker's Affirmation instead of the usual Form be permitted to make his solemn Affirmation in these Words. Stat. 7 & 8 W. 3. c. 34. instead of an

**I** A. B. do declare in the Presence of Almighty God, the Witness of the Truth of what I say. Oath.

Which solemn Affirmation shall be of the same force But may not and effect in all Courts of Justice, and other Places where be a Witness by Law an Oath is requir'd, as if such Quaker had taken in Criminal an Oath in the usual Form. *Ibid.* Cases.

And if such Quaker affirm any thing which, if the 11 & 12 W. 3. same had been in the usual Form, would have amounted c. 4. A Papist to wilful and corrupt Perjury, he shall incur the same Pains and Forfeitures as are inflicted on Persons convicted of wilful and corrupt Perjury. *Ibid.* Oaths at the

Provided that no Quaker, or reputed Quaker, shall by Age of 18, to virtue hereof be permitted to give Evidence in any Criminal Cause, or serve on any Juries, or bear any Office Estate. or Place of profit in the Government. *Ibid.*

After the 29th of September, 1700. If any person educated in the Popish Religion, or professing the same, shall not within six Months after he attains the Age of eighteen Years, take the Oaths of Allegiance and Supremacy, and subscribe the Declaration in the 30 Car. 2. c. 1. for the more effectual preserving the King's Person and Government, by disabling Papists to sit in either House of Parliament, in the Court of Chancery, King's Bench, or Quarter Sessions of the County where he resides, he shall in respect of himself only, and not in respect of any of his Heirs or Posterity, be disabled to Inherit, take by Descent, Devise, or Limitation, in possession, reversion, or remainder, any Lands, Tenements, or Hereditaments within this Kingdom; and during the Life of such person, and until he shall take the said Oaths, and make, repeat, and subscribe the said Declaration, the next of Kin who is a Protestant shall have and enjoy the same, without being accountable for the profits during such Enjoyment thereof; but in case of any wilful Waste by such person, or any other by his License or Authority, the party disabled, his Executors and Administrators, shall recover treble Damages against the person committing the same, his Executors or Administrators, by Action of Debt in the Courts at Westminster. Stat. 11 & 12 W. 3. c. 4.

All persons, as well Peers as Commoners, that shall 13 & 14 W. 3. bear Office Civil or Military, or receive any Pay, Salary, c. 6. Officers Fee, or Wages, by reason of any Patent or Grant from Civil and Military the

litary, Ecclesiastical persons &c. to take the Abjuration Oath. the King, or shall have command or place of Trust under his Majesty, or from any of his Predecessors, or by his or their Authority, or by Authority deriv'd from them within this Kingdom, or in his Majesty's Navy, or the Islands of Guernsey or Jersey, or shall be of the Household, or in the Service or Employment of his Majesty, Prince George, or the Princess Anne; and all Ecclesiastical Persons, Members of Colleges and Halls in either University of the Foundation (being eighteen Years of Age) and all Persons teaching Pupils in either University or elsewhere; and all Schoolmasters and Ushers, Preachers and Teachers of separate Congregations, Serjeants at Law, Counsellors, Barristers, Advocates, Attornies, Solicitors, Proctors, Clerks, or Notaries, by practising as such in any Court whatever, who shall reside in London or Westminster, or thirty Miles thereof shall in Easter or Trinity Term next, in open Court, in the Chancery, King's Bench, Common Pleas, or Exchequer, take the following Oath, viz.

## The Oath.

**I** A. B. do truly and sincerely Acknowledge, Profess, Testify and Declare in my Conscience before God and the World, that our Sovereign Lord King William is Lawful and Rightful King of this Realm, and of all other his Majesties Dominions and Countries thereunto belonging. And I do solemnly and sincerely Declare, that I do believe in my Conscience, that the Person pretended to be Prince of Wales, during the Life of the late King James, and since his Decease, pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, hath not any Right or Title whatsoever to the Crown of this Realm, or any other the Dominions thereto belonging: And I do Renounce, Refuse and Abjure any Allegiance or Obedience to him. And I do Swear that I will bear Faith and true Allegiance to his Majesty King William, and him will defend to the utmost of my Power against all Traiterous Conspiracies and Attempts whatsoever, which shall be made against his Person, Crown or Dignity. And I will do my best Endeavour to Disclose and make known to his Majesty and his Successors all Treasons and Traiterous Conspiracies, which I shall know to be against him or any of them. And I do faithfully Promise, to the utmost of my Power, to Support, Maintain and Defend the Limitation and Succession of the Crown against him the said James, and all other Persons whatsoever, as the same is or stands limited (by an Act Intituled. An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown) to his Majesty during his Majesty's Life, and after his Majesty's Decease to the Princess Anne of Denmark, and the Heirs of her Body, being Protestants; and for Default of such Issue to the Heirs of the Body of his Majesty, being Protestants: And as the same by

one other Act, intituled, An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject, is and stands limited after the Decease of his Majesty and the Princess Anne of Denmark; and for Default of Issue of the said Princess and of his Majesty, respectively to the Princess Sophia, Electress and Dutches Dowager of Hanover, and the Heirs of her Body, being Protestants. And all these Things I do plainly and sincerely Acknowledge and Swear, according to these express Words by me spoken, and according to the plain and common Sense and Understanding of the same Words, without any Equivocation, mental Evasion, or secret Reservation whatsoever. And I do make this Recognition, Acknowledgement, Abjuration, Renunciation, and Promise, heartily, willingly, and truly, upon the true Faith of a Christian. So help me God.

Every Person taking the said Oath, shall subscribe his Name or Mark thereto. *lb.*

And all Persons who shall be admitted to any Place or This Oath to Office, Civil or Military, or shall receive Pay, Salary, be taken on Fee, or Wages, or shall have any Command or Place of Admission to Trust under the Crown, or in the Dominions thereto be any Office. long, shall take the said Oath; at the same Time he shall make and subscribe the Declaration of 25 Car. 2. *cap. 2.* against Transubstantiation.

And all Ecclesiastical Persons, Members of Colleges in Ecclesiastical the Universities of the Foundation, as soon as they shall Persons, Law-attain the Age of 18 Years; and all Tutors, School-masters, yers, &c. to Ushers, Teachers of separate Congregations, Serjeants take the Oath and Barristers at Law, Advocates, Attorneys, Solicitors, within three Proctors, Clerks, or Notaries, shall within three Months Months. after they are admitted to any such Preferment, Benefice, Office, Employment or Business, take and subscribe the said Oath in one of the Courts at *Westminster*, or at the Quarter Sessions of the County, City, or Place where On Pain of being disabled to hold any Office, &c. they shall reside, upon Pain of being disabled to hold or enjoy the said Offices or Employments, or any Profit or Advantage appertaining to any of them.

And if any such Person, after such Neglect or Refu- Nonjurors ex- sal to take the said Oath, shall, by himself, his Deputy, exercising any or Trustee, execute any of the said Offices or Employ- Employment, ments after the Time he ought to have taken the said disabled to Oath, he shall be disabled to sue in Law or Equity to be sue, and shall Guardian, Executor, or Administrator, and incapable of forfeit 500 l., any Legacy or Deed of Gift, or to be in any Office with- in this Kingdom, and shall forfeit 500 l. to him that will sue for the same. And a like Register shall be kept by the Courts which shall administer the said Oath, as



was required to be kept by the said Act of 25 *Car.* 2. of the subscribing the Declaration therein mentioned: Provided, that if any Person shall forfeit his Office by neglecting to take the said Oath, he shall be capable of a new Grant of it, or of any other upon the taking the same, if it be not granted to another Person before. *Ib.*

Peers and Members of the Commons to take the said Oath.

No Peer, after the 25th of *March* 1702, shall Vote, or make his Proxy, or sit in the House of Peers during any Debate, nor shall any Member of the Commons sit or vote during any Debate, after their Speaker chosen, until such Peer or Member respectively shall have taken the said Oath in Manner following, *viz.* The said Oath shall be made and subscribed between the Hours of Nine in the Morning and Four in the Afternoon, by every Peer at the Table before he takes his Place, and while there is a full House with the Speaker in his Place; and by every Commoner at the Table, while there is a full House with their Speaker in the Chair. *Ib.*

On Pain of being adjudged Popish Recusants Convict, and Forfeiture of 500 *l.*

And every Peer or Member of the Commons presuming to vote or make his Proxy, not having taken and subscribed the said Oath as aforesaid, shall from thenceforth be adjudged a Popish Recusant Convict, and be disabled to hold any Office or Place of Trust, Civil or Military, in this Kingdom, or the Dominions thereto belonging, and be disabled to sit in either House, or make a Proxy in the House of Peers, or sue in any Court of Law or Equity, or to be Guardian, Executor, or Administrator, or capable of any Legacy or Deed of Gift, and shall forfeit for every wilful Offence against this Act 500 *l.* to him that will sue for the same. *Ib.*

Provided that this Act shall not make void any Office of Inheritance, so as a Substitute be appointed, who shall take the Oaths according to this Act, and be approved by his Majesty under his Privy Signet. *Ib.*

Refusal to be certified.

And it shall be lawful for any Persons authorized to tender the Oaths required by 1 *W. & M. cap.* 8. to tender the Oaths hereby appointed to any Person whatsoever; and if any Person shall neglect or refuse to take the same, the Persons tendering the said Oath, shall certify the Refusal thereof to the next Quarter Sessions, and such Refusal shall be recorded there, and certified into the Court of Chancery or King's-Bench, there to be recorded in a Roll kept only for that Purpose. *Ib.*

Inferiour Officers excepted.

Provided this Act shall not extend to any High Constable, Petty Constable, or inferiour Officer, or to any Forester or Keeper of a Park, Warren, or Game, or to the Bailiff of any Manour, or to any like private Offices. *Ib.*

*This Act was made to declare some Alterations in the Oath 1 Ann. c. 22. appointed to be taken by the said last mentioned Act, but I shall refer the Reader to the Act of 1 Geo. cap. 13. for the present Form of the Abjuration Oath.*

It is hereby enacted, that every King or Queen of this 5 Ann. c. 8. Realm at his or her Coronation, shall take and subscribe an Oath to maintain and preserve inviolably the Settlement of the Church of *England*, and the Doctrine, Worship, Discipline and Government thereof as by Law established; and that this be adjudg'd a fundamental and essential Part of the Treaty of Union. Stat. 5 Ann. c. 8.

By this Act further Alterations are made in the Abju- 6 Ann. c. 7. ration Oath. See 1 Geo. c. 13.

The Abjuration Oath is requir'd to be taken by all 6 Ann. c. 14. Officers, Civil and Military, in *Scotland*. Scotland.

By this Act, the Time for taking the Abjuration Oath 8 Ann. c. 14. in *Scotland* is enlarg'd, and the Oath of Allegiance and Oath of Assurance recited in this Act are required to be taken in *giance and Scotland* at the same Time the Oath of Abjuration is administered: And the Courts of *Westminster* are impower'd to administer the said Oaths and Assurance as well as the *Scotland*, with Courts in *Scotland*, to any Officers of that Kingdom. The the Abjurati- Oath and Assurance required by this Act are as follow, on Oath.

viz.

Administer'd  
by the Courts  
at *Westminster*.

#### Oath of Allegiance.

I A. B. do sincerely promise and swear, that I will be faithful, and bear true Allegiance to her Majesty Queen Anne. Oath of Allegiance.  
So help me God.

#### Assurance.

I A. B. do in the sincerity of my Heart, assert, acknowledge Assurance:  
and declare, That her Majesty Queen Anne is the only lawful undoubted Sovereign of this Realm, as well De Jure, that is, of Right Queen, as De Facto, that is, in the Possession and Exercise of the Government; and therefore I do sincerely and faithfully promise and engage, that I will, with Heart and Hand, Life and Goods, maintain and defend her Majesty's Title and Government against the pretended Prince of Wales and his Adherents, and all other Enemies, who either by open or secret Attempts shall disturb or disquiet her Majesty in the Possession and Exercise thereof. See the Abjuration Oath, 1 Geo. c. 13.

All Officers, Civil and Military, and others, who shall 1 Geo. c. 13. receive any Pay, Salary, Fee or Wages, by any Grant from the Crown, or shall have any Command or Place of

The Oaths to Trust under his Majesty, or by Authority derived from be taken by him within Great Britain, or the Navy, or in the Islands the Officers of Jersey or Guernsey, or shall be of the Household, or in Civil and Military, Ecclesiastical Persons, &c. the Service of his Majesty, or the Prince or Princess of Wales, or their Issue; and all Ecclesiastical Persons, Heads and other Members of the Universities, who shall be of the Foundation, or shall enjoy any Exhibition, and are 18 Years of Age; and all Tutors, School-masters, Ushers, and Teachers of separate Congregations; all Constables, Constables and Practisers of the Law, Advocates, Attorneys, Solicitors, Lawyers to Writers in Scotland, Proctors, Clerks, or Notaries, who take them. shall reside within thirty Miles of the Cities of London or Westminster, on the first Day of Michaelmas Term next, shall take the Oaths of Allegiance, Supremacy and Abjuration on some Day during the said Term in one of the Courts of Westminster. See the Oaths of Allegiance and Supremacy before, 1 W. & M. c. 8. Stat. 1 Geo. c. 13.

The Oath of Abjuration as alter'd by this Act is as follows, viz.

Oath of Abjuration.

**I** A. B. do truly and sincerely acknowledge, profess, testify and declare in my Conscience before God and the World, That our Sovereign Lord King George is Lawful and Rightful King of this Realm, and all other his Majesty's Dominions and Countries thereunto belonging. And I do solemnly and sincerely declare, That I do believe in my Conscience, that the Person pretended to be Prince of Wales during the Life of the late King James, and since his Decease, pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, or of Scotland, by the Name of James VIII. or the Stile and Title of King of Great Britain, hath not any Right or Title whatsoever to the Crown of this Realm, or any other the Dominions thereunto belonging. And I do renounce, refuse and abjure any Allegiance or Obedience to him. And I do swear, that I will bear Faith and true Allegiance to his Majesty King George, and him will defend to the utmost of my Power against all traitorous Conspiracies and Attempts whatsoever, which shall be made against his Person, Crown, or Dignity. And I will do my utmost Endeavour to disclose and make known to his Majesty and his Successors, all Treasons and traitorous Conspiracies which I shall know to be against him or any of them. And I do faithfully promise, to the utmost of my Power, to support, maintain and defend the Succession of the Crown against him the said James, and all other Persons whatsoever. Which Succession, by an Act entituled, An Act for the further Limitation of the Crown, and better securing the Rights and Liberties



Liberties of the Subjects, is and stands limited to the Princess Sophia, Electress and Dutchess Dowager of Hanover, and the Heirs of her Body, being Protestants. And all these Things I do plainly and sincerely acknowledge and swear, according to these express Words by me spoken, and according to the plain and common Sense and Understanding of the same Words, without any Equivocation, mental Evasion, or secret Reservation whatsoever. And I do make this Recognition, Acknowledgement, Abjuration, Renunciation and Promise, heartily, willingly and truly, upon the true Faith of a Christian. So help me God.

All and every the said respective Persons and Officers not having taken and subscribed the said Oaths at *Westminster* as aforesaid, shall, on or before the 23d of *January* next, take the same at the Quarter Sessions of such County, City or Place where he shall reside the first of *December* 1715.

And all Persons who shall be admitted to any Office, Officers, Ecclesiastical or Military, or receive any Pay, Salary, Fee, or ecclesiastical Wages from the Crown, or have any Command or Place Persons, of Trust under his Majesty, or by Authority derived from High Constables and Lawyers to take him, within that Part of *Great Britain* call'd *England*, or in his Majesty's Navy, or in the Isles of *Jersey* and *Guernsey*, or that shall be admitted into the Service of the Oaths his Majesty's Household or Family, or of the Prince or within three Princesses of *Wales*, or their Issue; and all Ecclesiastical Months after they enter Persons, Heads and Members of Colleges of the Foundation, or who enjoy any Exhibition, being 18 Years of on their Employment. Age; and all Tutors, School-masters and Ushers, and all Teachers of separate Congregations, High Constables, Practisers of Law, Advocates, Attorneys, Solicitors, Proctors, Clerks, or Notaries, in that Part of *Great Britain* In *England*. call'd *England*, who shall after the 10th of *August* 1715, be admitted into, or enter upon any of the above mention'd Preferments, Benefices, Offices, or Places, or take upon him or them any such Practice, Employment, or Business, shall within three Months after take and subscribe the said Oaths in one of the Courts at *Westminster*, or at the Quarter Sessions of the County or Place where they shall reside. *Id.*

And all Persons who are required by any Acts made Officers in since the Union to take the Oath of Allegiance, and the *Scotland* to Oath of Abjuration, and subscribe the Assurance, on Account of any Office, Civil or Military, or any other Office of Allegiance count of any Office, Civil or Military, or any other Office of Allegiance cation in *Scotland*, shall, before the 1st of *December* 1715, and Abjuration take the Oath of Abjuration above-mentioned, and take on, and the and subscribe the said Oath of Allegiance, and subscribe Assurance.

the Assurance recited in this Act in the Words following, viz. *Ib.*

Oath of Allegiance.

**I** A. B. do sincerely promise and swear, that I will be faithful, and bear true Allegiance to his Majesty King George. So help me God.

Assurance.

**I** A. B. do, in the sincerity of my Heart, assert, acknowledge and declare, That his Majesty King George is the only lawful and undoubted Sovereign of this Realm, as well De Jure, that is, of Right King, as De Facto, that is, in the Possession and Exercise of the Government; and therefore I do sincerely and faithfully promise and engage, that I will with Heart and Hand, Life and Goods, maintain and defend his Majesty's Title and Government against the Person pretended to be Prince of Wales during the Life of the late King James, and since his Decease, pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, or of Scotland by the Name of James the Eighth, or the Stile and Title of King of Great Britain, and his Adherents, and all other Enemies, who either by open or secret Attempts, shall disturb or disquiet his Majesty in the Possession and Exercise thereof.

The said Oaths and Assurances to be taken and subscribed within such Time, before such Judges, and in such Manner, and to be so certified as by the abovementioned Acts are directed. *Ib.*

Nonjurors in Scotland not to vote at Elections.

And it is declared, That every Person in Scotland who shall refuse to take the aforesaid Oath of Abjuration, or being a Quaker, shall refuse to declare the Effect thereof upon his solemn Affirmation, shall not be capable of giving a Vote for the Election of a Precedent or Chief Officer for taking the Poll at any Election, making up of the Rolls, or of any Member to serve in the House of Commons for any Place in Scotland, or Commissioner to chuse a Burgess for any Place there. And it is further declared, That by no Words in any of the said Oaths formerly imposed, it was intended to oblige his Majesty's Subjects to any Acts inconsistent with the Establishment of the Church of Scotland. And it is enacted, That all Heads and Members of Colleges in Scotland, and all Probationers or Licentiats of Divinity, before they enter upon their Tryals, or obtain Licence to preach, and all School-masters in Scotland, shall take the aforesaid Oaths, and subscribe the said Assurance, before such Judges, and obtain such Certificates as are appointed by this and former Acts, to be taken by Officers Civil and Military. *Ib.*

Ecclesiastical Persons in Scotland to take the Oaths and Assurance.

And

And all Persons aforesaid neglecting or refusing to take Penalty of the said Oaths as aforesaid, shall be *ipso facto* adjudged not taking disabled to have or enjoy the said Offices or Employments, or any Profit appertaining to them, and the same are hereby adjudged void. *Ib.*

And all Persons aforesaid who shall by themselves or Disabilities Deputies execute any of the said Offices or Employments, and Forfeiture not having taken the said Oaths, being convicted thereof as in or in the Courts at *Westminster*, or at the Assizes, upon *England*. Prosecution before the Courts of Justiciary, or Circuits in *Scotland*, such Person shall be disabled to sue in Law or Equity, or to be Guardian, Executor, or Administrator, and incapable of a Legacy or Deed of Gift, or to have any Office in *Great Britain*, or to vote at any Election for Members of Parliament, and shall forfeit 100 l. to him that will sue for the same in the Courts at *Westminster*, or by way of Summons or Complaint before the Court of Sessions, or before the Court of Justiciary in *Scotland*. *Ib.*

And it shall be lawful for the respective Courts aforesaid to administer the said Oaths to the Persons aforesaid, for which the proper Officer shall have two Shillings for his Fees and no more; and a Register shall be kept of Register. the Persons taking and subscribing the said Oaths to be inspected gratis. *Ib.*

And it shall be lawful for two or more Justices of the Peace, or any other Persons appointed by Order of Council, or Commission under the Great Seal, to tender the said Oaths to any Person whatsoever, whom they shall suspect to be disaffected to the Government; and upon their Refusal to certify the same to the next Quarter Sessions, where the same shall be recorded, and shall from thence be certified by the Clerk of the Peace into the Court of Chancery, or King's Bench, Court of Sessions, or Court of Justiciary in *Scotland*, there to be recorded: And every Person from the Time of his Neglect or Refusal to take the said Oaths shall be adjudged a Popish Recusant Convict. *Ib.*

And if any Person summoned by two Justices, &c. Persons not by Writing under their Hands and Seals, to appear before appearing them at a certain Day and Time to take the said Oaths, on Summons such Summons being served by leaving it at the Person's Dwelling, or usual Place of Abode, with one of the Family, shall neglect to appear according to such Summons, upon due Proof made thereof upon Oath, such Justices, &c. are required to certify the same to the next Quarter Sessions; and if the said Person neglect or refuse to appear and take the said Oaths at the next Quarter



**To be certified to the Courts above.** ter Sessions, his Name being publickly read at the first Meeting of the Sessions, he shall be adjudged a Popish Recusant Convict, and forfeit and be proceeded against as if he had actually refused to take the said Oaths, and the same shall be certified by the Clerk of the Peace to the Court of Chancery or King's Bench, Court of Session, or Court of Justiciary in Scotland, there to be recorded in Rolls kept for that Purpose. *lb.*

**If any Member of a College neglect to take the Oaths,** And if any Head or Member of any College in the Universities of Oxford or Cambridge, who shall be of the Foundation, or shall enjoy any Exhibition, being of the Age of Eighteen, shall neglect or refuse to take the said Oaths in this Act mentioned, or to produce a Certificate thereof signed by the proper Officer of the Court, and cause the same to be entered in the Register of his College within one Month after his taking the same; and if the Persons in whom the Right of Election of such Head or Member shall be neglect to elect some other fit Person in his Room by the Space of twelve Months, then it shall be lawful for his Majesty and his Successors, under the Great Seal or Sign Manual, to appoint some fit Person qualified according to the local Statutes of such College to succeed in the Room of such Person neglecting to take the said Oaths. *lb.*

**and the College do not elect another in his Room within a Year,**

**the King may appoint one to succeed him.**

**Mandamus on refusal to admit him.** And if the Head of any College, or other Persons authorized to admit, shall refuse or neglect to admit such Persons so appointed by the Crown by the space of ten Days, then the local Visiter is required to admit such Person within one Month after Demand. And if the said Visiter neglect or refuse the same, it shall be lawful for the King's Bench to issue a *Mandamus* to such Visiter to admit him, and proceed upon the said Writ according to the Course of the Court in such Cases. *lb.*

**Person taking the Oaths re-capacitated.** Provided that any Person, who by any Neglect or Refusal, according to this Act, shall forfeit his Office, may be capable of a new Grant, or of any other Office, upon taking the said Oaths, so as such Office be not before granted to another. *lb.*

**Peers and Members of Parliament to take the Oaths.** Provided that no Peer or Member of the Commons be allowed to sit, or make his Proxy, until he shall have taken the Abjuration Oath in this Act, instead of the Abjuration required by former Acts, together with such other Oaths and Declaration against Transubstantiation as were heretofore required to be taken with the said Oath of Abjuration. *lb.*

**On Pain of being disabled to sue, &c. and forfeiture of** And such Peer or Member of the Commons who shall presume to sit or make his Proxy before he shall have taken the said Oaths, shall be disabled to sue in Law

or Equity, to be Guardian, Executor, or Administrator, and be incapable of any Legacy or Deed of Gift, or to be in any Office, or to vote at any Election for Members of Parliament, and shall forfeit 500 l. to him that will sue for the same. *Ib.*

Offices of Inheritance saved, so as a lawful Deputy be Offices of Inheritance made and qualified as herein is required, and approved heritance. under the King's Privy Signer. *Ib.*

Offices of Inheritance in *Scotland*, not to be forfeited but by the Laws in force there. *Ib.*

Provided this Act shall not extend to any Tything-Not to extend man, Headborough, Overseer of the Poor, Church-war-to Head-boden, Surveyor of the Highway, and such inferior Officers, &c. roughs, &c. cers, or to any Forester, Keeper of Park, Chase, Warren or Game, or Bailiff of a Mannor, and such like private Officers.

Provided also, that all Persons who by any Law were Test confirmed obliged to receive the Sacrament according to the Church ed, of *England*, or to make a Declaration against Transubstantiation, shall remain obliged to do the same as formerly. *Ib.*

Provided that any Person who shall become a Popish Persons tak- Recusant Convict by Virtue of this Act, and shall after- ing the Oaths wards take the said Oaths, &c. hereby required, shall restored. from thenceforth be discharged from such Conviction. *Ib.*

And his Majesty is hereby impowered to grant a Com- Soldiers and mission to any Person to administer the said Oaths to all Seamen. Officers, Seamen and Soldiers in his Majesty's Service by Sea or Land, to be enrolled by the Person taking the same, and delivered into the Office of the Petty Bag before the 12th of *February* 1715. And no Seaman or Soldier, under the Degree of a Commission or Warrant Officer, shall pay any Fee on taking the said Oaths. *Ib.*

And after the 29th of *September* 1715, the Oath of Ab- *Ireland*. juration appointed by this Act, and no other, shall be taken in the Kingdom of *Ireland*; and the Indemnities in this Act shall be extended to the said Kingdom. *Ib.*

Every Person who after the 1st of *June* 1719, shall 5 *Geo. c. 29*. present himself to be try'd as to his Qualifications to Teachers in preach, or to be ordained a Minister of the Church of *Scotland* to *Scotland*, shall, before such Time, take and subscribe in take the Ab- the Courts of the Lords of Session, in the Court of Justi- juration Oath. ciary, or Court of Exchequer in *Scotland*, or at the Quar- ter Sessions, or before Sheriffs or Stewarts, or their De- puties, in open Court held for their Shire or Stewartry, where such Person has Residence, or within which the Presbytery to which he shall present himself shall be held, the Abjuration Oath in this Act mentioned, which differs only

Alterations only from the Abjuration Oath recited in the former Act made in it for in the following Particulars, viz.

them. Instead of King of this Realm in the former Act, *King of Great Britain.*

The Word *Countries* here omitted.

Instead of his Person, Crown and Dignity, *his Person and Government.*

Instead of Against him the said *James*, and all other Persons whatsoever, which Succession, by an Act entitled, *An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject*, is and stands limited to the Princess *Sophia*, Electores and Dutchess Dowager of *Hanover*, and the Heirs of her Body being Protestants. *In the Heirs of the Body of the late Princess Sophia, Electores and Dutchess of Hanover, being Protestants, against him the said James, and all other Persons whatsoever.*

Instead of heartily, willingly and truly, upon the true Faith of a Christian, only, *heartily, willingly and truly.*

To pay for a Certificate 2 s.

And the Courts aforesaid shall administer the said Oath to such Persons as shall tender themselves to take the same; and the Clerks of such Courts shall grant Certificates, bearing the Day and Date of taking such Oath, and Names of the Commissioners of the Peace present, and the Name and Description of every Person who shall take such Oath; for which Certificate there shall be paid no more than 2 s. *Ib.*

Certificate to be recorded.

And every Person who shall present himself in order to obtain such Licence, or to be Ordained, shall, before he obtain the Licence, or be Ordained, cause to be recorded in the Book of the Sheriffs or Stewarts Court, within the Jurisdiction whereof is the Seat of such Presbytery, a Certificate of his having taken and subscribed the said Oath. *Ib.*

Episcopal Clergy to take the said Oath.

And no Person shall preach or perform Divine Service in any Episcopal Meeting-House or Congregation in *Scotland*, where more than nine shall be present beside those of the same Household, but such who shall pray in express Words for King *George*, the Prince and Princess of *Wales*, and their Issue, and who shall have taken and subscribed the said Oath in one or other of the Courts aforesaid where he is resident, or the Meeting-house situate. *Ib.*

And pray for the Royal Family.

Penalty of Presbyterian Ministers not taking the Oath.

And if any Expectant of Divinity hereby directed to take the said Oath, shall present himself or apply to any Presbytery or Church Judicature, to be ordained or licensed to preach, without causing to be recorded a Certificate of his having taken the Oath as aforesaid, he shall be liable to six Months' Imprisonment, and be incapable



pable of enjoying any Benefice, Glebe, or Manse, by Virtue of any Presentation, Call, or other Settlement, as a Minister of any Parish, for one Year from the Time he shall take the said Oath, after having obtained Licence to preach. And all Civil Magistrates are required to hinder such Person to preach in any Church Episcopal within their Jurisdiction. Or if any Person shall preach or perform any Part of Divine Service in any Episcopal Meeting-house, without praying in express Words for King *George*, the Prince and Princess of *Wales*, and their Issue, or without having taken the aforesaid Oath, he shall be liable to six Months Imprisonment, and such Meeting-house shall be shut up for six Months. *16.*

And one Moiety, not exceeding half a Year's Stipend of the Parishes respectively concerned of such Penalties imposed between as shall be incurred by this Act, shall go to the Prosecutor, and the other Moiety to the Poor of the Parish where the Offence shall be committed; and the said Moieties respectively shall be recovered by way of Action or summary Complaint, without abiding the ordinary Process of Law, and no Stop of such Prosecution shall be, unless upon Production of a Certificate that the Person prosecuted has taken the said Oaths. *16.*

And every Minister of the Church of *Scotland* shall be acquitted, pardoned and discharged of the Offence of Ministers having preached without taking and subscribing the Oaths and Assurance appointed to be taken by the *1 Geo. c. 13.* and of all Forfeitures, Pains and Disabilities incurred on that Account, by Virtue of the said Act. *16.*

And every Person who now is or shall hereafter be ordained or admitted a Minister of the Church of *Scotland*, except such as have taken and subscribed the Oaths and Declarations appointed by the last mentioned Statutes, shall on or before the 1st of *June 1719*, or before their being ordained or admitted Minister of any Congregation in *Scotland*, take and subscribe the Oath of Allegiance and the Assurance in the said Act of *1 Geo. c. 13.* and also the Oath of Abjuration herein specified, in lieu of the Oath of Abjuration formerly required by Law in such Manner, and to be certified as therein or herein is beforementioned. And every Minister who shall take, or who have taken the said Oaths, shall cause a Certificate thereof to be entered in the Books of the Sheriff or Steward Courts, within the Bounds of which the Parish lies whereof he is Minister; and the Clerks of the said Courts shall enter such Certificate, and grant Extracts thereof without any other Fee than 2 s. *16.*

And

Patron presenting a Person unqualified, deemed as of another Church or Parish, or any Person who shall not accept the Presentation to which he is presented, such Presentation shall not be accounted any Interruption of the Course of Time allowed to the Patron for presenting, but the *Jus devolutum* shall take Place, as if no such Presentation had been offered. *Ib.*

And if any Patron shall present a Person to a vacant Church not qualified by taking the said Oaths as aforesaid, or present a Person who is then Pastor or Minister of another Church or Parish, or any Person who shall not accept the Presentation to which he is presented, such Presentation shall not be accounted any Interruption of the Course of Time allowed to the Patron for presenting, but the *Jus devolutum* shall take Place, as if no such Presentation had been offered. *Ib.*

And it is declared, that nothing herein shall prejudice the Rights of the Church as it now stands by Law established, as to the trying of the Qualities of any Person presented to any Church or Benefice. *Ib.*

N. B. The Acts for permitting Quakers to use their solemn Affirmation, and take the Effect of the Abjuration Oath, in Read of the Oaths required by the rest of the King's Subjects, may be found under the Title of Dissenters, Vol. II.

### READINGS.

The Word Oath, according to Sir *Edward Coke*, is derived of the *Saxon* Word *Eoth*, and is an Affirmation or Denial of any Thing, before one or more who have Authority to administer the same, for the Discovery of Truth and Right, calling God to witness, that the Testimony he gives is true; and it is called a Corporal Oath, because the Witness lays his Hand upon the Holy Scriptures at the Time he takes it. *3 Inst.* 165.

Every Person above the Age of twelve Years, and a Layman, was antiently obliged to take the Oath of Allegiance at the Sheriff's Tourn, unless he was within some Leet, and then he was to take it at the next Court Leet after he arrived at that Age, and it was a high Contempt to refuse it. *1 Inst.* 68. But the Clergy were not obliged to take the Oath of Allegiance till the Reformation; nor was there any Oath of Supremacy framed or taken before that Time: And it is to be observed, that no antient Oath can be altered, or new one imposed without Act of Parliament; and no Oath can be administered by any Court, or other Persons, after it is established, unless such Court, &c. are appointed by Act of Parliament to administer

nister the same, or it was antiently allowed by the Common Law. 3 *Inst.* 165.

And where an Oath is administered by any Court, or Persons having lawful Authority to tender the same, and it be afterwards broken, yet if it be not in a Judicial Proceeding, it is no Perjury, or punishable by Common Law; as the Breach of an Oath given to Officers or Ministers of Justice duly to execute their Offices; or for the Breach of the Oaths of Allegiance, and other Oaths of State. Tho' this may be urged as an Aggravation of the Crime, if the Offender be indicted for it, yet the Offender shall not be charged in any Judicial Court solely with the Breach of these Oaths, or incur the Pains of Perjury, tho' he be really perjured in Conscience. 3 *Inst.* 166.

Therefore, if one call another Perjured Man, he may have an Action on the Case, because it shall be intended to be contrary to his Oath in a Judicial Proceeding: But for calling one a Forsworn Man, no Action lies, because the forswearing may be Extra-judicial, and consequently no Perjury in Law. *Ibid.*

Upon the 7 *Jac.* 1. *cap.* 6. it has been resolved, Two Justices that two Justices of Peace may tender the Oath of may tender Allegiance to any Person within their Jurisdiction, the Oaths to a tho' his Dwelling be in another County. 2 *Bul.* Stranger. *strode* 156. the King *ver.* *Griffith.*

It has been held also, that a bare Suspicion will Must be some not authorize a Justice of Peace to tender the Oath Cause of Suspicion. mentioned in the said Act, and commit the Party upon his Refusal; but there must be some good Cause of Suspicion, for the Cause of Suspicion is traversible, and whether it be just and lawful shall be try'd by the Courts above. 2 *Inst.* 52.

A Person cannot be said to refuse the Oath Oath must be unless it be read or offered to be read to him. read, or offer'd

The Oath must be taken in the very Words expressed in the Act, and cannot be qualified with any Reserve whatsoever. And yet it hath been resolved, that the using the Words in Conscience, instead of in my Conscience, or Sea of Rome, instead of See of Rome, is not material.

*Horne,*



By what County the Offender shall be try'd.

*Horne*, Bishop of *Winchester*, tendered the Oath of Supremacy in *Surrey*, (Parcel of his Diocese) to *Bonner*, then late Bishop of *London*, who refused to take it, and this was certified by the Bishop of *Winchester* into the King's Bench then sitting at *Westminster* in the County of *Middlesex*, where *Bonner* was indicted by a Jury of that County, according to the Act of 5 *Eliz. cap. 1.* The Question was, By what County he should be try'd, whether by a Jury of *Middlesex* where the Indictment was taken, or by a Jury of *Surrey* where the Offence was committed? And it was resolved, That he should be try'd by a Jury of *Surrey*, for this Statute extendeth to the Indictment only, and leaveth the Tryal to the Common Law, which appoints it to be where the Offence is committed, for regularly by the Common Law, *debet quis juri subjacere ubi deliquit.* *Dyer* 6 & 7. *Eliz.* 234. Co. 3. *Inst.* 34.

The King cannot dispence with any Member of the Commons taking the Oath of Allegiance, because he is by the 7 *Jac. cap. 6.* *Persona inhabilis* until he hath taken it. *Vaughan* 355.

If a Man hears Mass but once in his Life-time, and refuse the Oath of Supremacy upon a second tender, he shall be adjudged guilty of High Treason. *Cawley* 45.

See *Titles, Militia, Papists, Popish Recusants*, and *Parliament.*

*Orphans* : See *London.*

### Papists and Popish Recusants.

5 *Eliz. c. 1.*  
Maintaining  
the Pope's Authority a  
Præmunire.

IF any Subject of this Realm, after the 1st of April 1563, shall, by Writing, Cyphering, Printing, Preaching, or Teaching, Deed, or Act, advisedly and wittingly, hold, or stand with to extol, set forth, maintain or defend the Authority, Jurisdiction or Power claimed or usurped by the Bishop or See of *Rome* within this Realm, or wittingly attribute any such Jurisdiction, Authority, or Preheminence to the said Bishop or See of *Rome*, such Offenders, their Abettors, Procurers, and Counsellors, Aiders,

Aiders, Assisters, and Comforters, being indicted or presented within one Year after such Offence, and convicted or attainted at any Time after, shall incur a *Præmunire*. Stat. 5 Eliz. c. 1.

The said Offences to be enquired of by Justices of Assize, and Justices of Peace in their Sessions, and certified into the Court of King's Bench within forty Days after Presentment made, or at the first Day of the next Term, on Pain of 100 l. *Ib.*

And the Justices of the King's Bench are impowered to hear and determine the said Offences. *Ib.*

And if after Conviction, such Person shall offend a Second Offence, he shall be adjudged guilty of High Treason. Hence High

But this Act shall not extend to make any Corruption Treason. of Blood, Disinheritance of the Heir, Forfeiture of Dower, No Blood or to Prejudice the Right of any Person other than the corrupted Offender during his Life. *Ib.*

If any Person shall use or put in use, within this Realm or the Dominions thereof, any Bull, Writing, or Instrument of Absolution, written or printed, and obtained from the Bishop or See of Rome; or if any Person shall take upon him, by Colour of such Bull, &c. to absolve, or reconcile, or promise to absolve or reconcile; or if any Person shall willingly accept any such Absolution or Reconciliation; or if any Person shall obtain from the said Bishop or See of Rome, any Manner of Bull, Writing or Instrument, written or printed, containing any Matter or Cause whatsoever, or shall publish or put in use any such Bull, &c. such Offence shall be adjudged High Treason in the Offender, his Procurers, Abettors and Counsellors before the Fact; and his Aiders, Comforters and Maintainers after the Fact, shall incur a *Præmunire*. Stat. 13 Eliz. c. 2.

And if any Person to whom such Absolution, Reconciliation, Bull, or Instrument shall be offered, shall disclose the same within six Weeks after to some of the Privy Council, he shall incur the Pains and Forfeitures of Misprision of High Treason. *Ib.*

And if any Person shall bring into the Queen's Dominions any Tokens or Things named *Agnus Dei's*, or or wearing any Crosses, Pictures, Beads, or such like Superstitious sanctified Things from the Bishop or See of Rome, or from any Person deriving an Authority from thence, to consecrate or hallow the same, and shall deliver, or cause, or offer to be delivered any of them to any of the Queen's Subjects to be worn or used, that then such Offenders, and also the Persons receiving and taking the same, to the intent to use or wear them, shall incur a *Præmunire*. *Ib.*

Provided

Provided that if any Person, to whom such *Agnus Dei*, or other Things aforesaid, shall be offer'd, shall apprehend the Party offering the same, and bring him before a Justice of Peace, if he be able, and if not, shall within three Days, discover the Offerer to the Ordinary of the Diocese, or some Justice of Peace of the County, and where the Person, to whom the Offer shall be made, shall be Resident. Or if any Person shall within one Day after his receiving such *Agnus Dei*, &c. deliver the same to some Justice of Peace, he shall not incur any Penalty by this Act. *Ib.*

Provided that if any Justice of Peace to whom any of the Offences aforesaid shall be declar'd, shall not within fourteen Days, signify the same to some of the Privy Council, he shall incur a *Præmuniae*. *Ib.*

And if any Peer of this Realm shall be indicted of any of the Offences aforesaid, he shall have his Tryal by his Peers, as in Cases of High-Treason, and Misprision of High-Treason. *Ib.*

23 *Eliz. c. 1.*  
reconciling,  
or being re-  
conciled to  
*Rome*, High-  
Treason.

For the better explaining and enforcing the said Act of 13 *Eliz. c. 2.* it is enacted, that all Persons, who shall have, or pretend to have Power, or shall by any Ways or Means put in Practice, to absolve, perswade, or withdraw any of the Queen's Subjects from their natural Obedience to her Majesty, or to withdraw them for that Intent from the Religion establish'd, to the *Romish* Religion, or to move them to promise Obedience to the See of *Rome*, or any other Prince, State, or Potentate to be us'd within her Dominions, or shall do any Overt Act to that Intent or Purpose, shall be adjudg'd Guilty of High-Treason. And if any Person shall be willingly absolv'd, withdrawn or reconcil'd as aforesaid, or shall promise Obedience to any such pretended Authority, Prince, State, or Potentate; then every such Offender, his Procurers and Counsellors, shall be adjudg'd guilty of High-Treason, *Stat. 23 Eliz. c. 1.* And all Persons who shall willingly be Aiders or Maintainers (or who shall conceal any of the said Offences, and shall not within twenty Days after their Knowledge of such Offence, discover the same to some Justice of Peace) shall be adjudg'd guilty of Misprision of Treason. And every Person convicted of saying Mass, shall forfeit 200 Marks, and be committed to the next Goal for one Year, and until he shall pay the Penalty. And every Person willingly hearing Mass, shall forfeit 100 Marks, and suffer one Year's Imprisonment. *Ib.*

Concealing  
the said Of-  
fence, Misprison  
of Treason.

Penalty of  
saying Mass,  
200 Marks  
and a Year's  
Imprisonment.  
Of hearing  
Mass, 100  
Marks.

And all Forfeitures incurr'd by this Act, shall be divided into three equal Parts, one third to the Queen for her own Use, one other third to the Queen for Relief of the

Poor



“Poor of the Parish where the Offence is committed ; and the other third to him that will sue for the same. *Ib.*

Every Person above the Age of sixteen Years, who shall not repair to Church, &c. as required by 1 *Eliz. c. 2.* shall forfeit 20*l.* for every Month he shall be absent ; and besides the said Forfeiture, every Person who shall be absent twelve Months, after Certificate thereof by the Ordinary, Justices of Assizes and Goal Delivery, or Justice of Peace of the County where the Offender shall dwell or be, he shall be bound with two sufficient Sureties in the Sum of 200*l.* for his good Behaviour, and so remain until he shall conform and come to Church, according to the said Statute of 1 *Eliz. Ib.*

And if any Person shall maintain a School-master who shall not repair to Church as aforesaid, or be allowed by the Ordinary, he shall forfeit 10*l.* for every Month he keeps him, and such School-master shall be disabled to teach Youth, and suffer one Year's Imprisonment without Bail or Mainprize. *Ib.*

And all fraudulent Assurances made to evade the said Penalties, are hereby declared void. *Ib.*

No Jesuit, Seminary Priest, or other Priest, Deacon, 27 *Eliz. c. 2.* or Religious or Ecclesiastical Person whatsoever, born Popish Priest, within the Queen's Dominions, and so made, ordained being a Sub- or professed by any Authority derived from the See of *Rome*, shall come into, be, or remain in any Part of her Majesty's Dominions, unless in such special Cases as *England*, High are provided for in this Act, on pain of being adjudged Treason. Stat. 27 *Eliz. c. 2.*

And every Person who shall wittingly and willingly Relieving a receive, relieve, comfort, aid, or maintain any such Priest, Felony Offender, shall be adjudged a Felon without Benefit of without Cler- Clergy. *Ib.*

And if any other Subject of this Realm, not being a Persons bred Jesuit or Priest, &c. as aforesaid, who shall be of or in Seminaries brought up in any College of Jesuits or Seminary beyond not returning the Seas, shall not within six Months after Proclamation, on Proclama- return into this Realm ; and within two Days after such tion, Return, before the Bishop of the Diocese or two Justices of Peace of the County where he shall arrive, submit himself and take the Oath of Supremacy, then every Guilty of such Person otherways returning or coming into this High Treason Realm, or the Dominions thereof without Submission as if they return aforesaid, shall be adjudged guilty of High Treason. *Ib.* after.

And if any Person shall directly or indirectly convey Sending Relief or cause to be conveyed, delivered, or sent, or shall o- to a Seminary therways contribute any Money or Relief to any Jesuit, a *Præmanire.* Priest or Offender aforesaid, or to or for the Maintenance

# PAPISTS and POPISH RECUSANTS.

or Relief of any College of Jesuits beyond the Seas; or if any Person, being in any College or Seminary, shall not return and make a Submission as required by this Act, every such Offender shall incur a *Premunire*. *Ib.*

Saving for  
Priests, &c.  
submitting  
themselves.

Provided that this Act shall not extend to any Jesuit, Priest, &c. who shall within three Days after he shall come into the Queen's Dominions, submit himself to some Bishop or Justice of Peace of the County where he shall arrive, and take the Oath of Supremacy, and from thenceforth continue in Obedience to the Laws. *Ib.*

Pain of con-  
cealing a  
Priest.

And every Subject who shall know that any such Jesuit or Priest is within this Realm, and shall not discover the same to some Justice of Peace, or other higher Officer, within twelve Days, but conceal the same, he shall be fined and imprisoned at the Queen's Pleasure. And if such Justice of Peace to whom such Discovery shall be made, do not within 28 Days inform the Privy Council thereof, he shall forfeit 200 Marks. *Ib.*

And if any Person submitting himself as aforesaid, shall within ten Years after, come within ten Miles of such Place as her Majesty shall reside in, without special Licence, he shall have no Benefit by his said Submission. *Ib.*

35 Eliz. c. 2.  
Persons not  
repairing to  
Church not  
to stir five  
Miles from  
Home.  
On pain of  
forfeiting  
their Goods,  
and the Pro-  
fits of their  
Lands.

Every Subject above sixteen Years of Age, being convicted of not repairing to Church to hear Divine Service, shall within forty Days after such Conviction repair to his usual Dwelling or Abode, and shall not pass or remove above five Miles from thence, on pain of forfeiting all his Goods and Chattels, and of all his Lands, Tenements and Hereditaments, and all his Rents and Annuities during the Life of such Offender. *Stat. 35 Eliz. c. 2.*

And every Person not having a certain Dwelling, and being a Popish Recusant, shall repair to the Place where he was born, or where his Father or Mother dwell, and shall not remove or pass above five Miles from thence, on pain of forfeiting all his Goods and Chattels, and of his Lands, Tenements and Hereditaments, and all his Rents and Annuities during his Life, to the Queen. *Ib.*

And such Offender being a Copyholder, shall forfeit all his Lands so holden for and during the Life of such Offender, to the Lords of whom the same shall be holden not being Popish Recusants, and in such Case the same Forfeiture to go to the Crown. *Ib.*

Recusant to  
deliver his  
Name to the  
Minister and  
Constable.

Provided that all Persons prohibited to remove above five Miles from Home, shall notify their coming thither, and deliver their Names to the Minister or Curate of the Parish, and to the Constable of the Town; and the Mini-

ster

ster or Curate shall enter the same in a Book to be kept in every Parish for that Purpose. *1b.*

And the said Minister, &c. shall certify the same to the Quarter Sessions, where it shall be entered upon the Rolls. *1b.*

And if any such Person being a Popish Recusant, Recusant not being a Feme Covert, and not having Lands, worth 40 *l.* Rents or Annuities of an absolute Estate of Inheritance of to abjure the Freehold, of the clear yearly Value of twenty Marks Realm if he above all Charges to his own Use, or Goods and Chattels stir from to the Value of 40 *l.* shall not within the Time appointed by this Act repair to his Place of Dwelling, &c. and notify his Name in Writing as aforesaid, or at any Time after shall pass or remove above five Miles from Home, and shall not within three Months after he is apprehended conform himself to the Laws, and come to Church, and make such Submission as in this Act is appointed, being required so to do by any two Justices of Peace, or Coroner of the County where the Offender shall then be, he shall abjure the Realm. And every Justice of Peace and Coroner, before whom such Abjuration shall be made, shall cause the same to be entered on Record, and certified to the next Assizes. And if such Offender shall refuse to make such Abjuration, or after such Abjuration shall not And if he re- go to such Haven, and within such Time as is appointed, turn, to be and from thence depart out of this Realm, or after such adjudged a Departure shall return again without the Queen's special Felon with- Licence, he shall be adjudged a Felon without Benefit of out Clergy. *1b.*

And if any Jesuit or Priest, being examined by any Person lawfully authorized thereto, shall refuse to answer directly whether he be a Jesuit or Priest, he shall be committed to Prison until he make a direct Answer there- to. *1b.*

Provided, that if any Person restrained from Travel- ling shall be required by Process to make his Appearance, he shall not incur any Forfeiture for Travelling on such Occasions. *1b.*

And if any Person offending against this Act, shall Persons con- before Conviction come to some Parish Church on some forming, dis- Sunday or Festival, and make a publick Submission and charged of Declaration of his Conformity, as is appointed by this the Penalty. Act, he shall be discharged from all Penalties and For- feitures; and every Minister or Curate where such Sub- mission shall be made, shall enter the Submission in a Book, and within ten Days certify the same to the Bi- shop of the Diocese. *1b.*



**Pain of Relapsing.**

Provided, that if such Offender shall afterwards relapse, and again become a Recusant in not coming to Church, he shall lose the Benefit he might otherways by Virtue of this Act have had upon his Submission. *lb.*

Provided, that all married Women shall be bound by every Branch of this Act, except that relating to Abjuration. *lb.*

**3 Jac. 1. c. 5.  
Reward for  
discovering  
those who  
harbour  
Priests, &c.**

Any Person who shall first discover to a Justice of Peace, a Recusant, or other Person who shall entertain or relieve any Jesuit, Seminary, or Popish Priest, or discover where any Mass has been said, and the Priest, or any of the Persons present, within three Days after the Offence, so as the Offenders may be convicted, such Discoverer shall not only be discharged from all Penalties for any such Offence, but shall have a third Part of the Forfeitures incurred by such Offence, so as the Sum do not exceed 150 *l.* and then the Discoverer shall have 50 *l.* only to be paid by the Sheriff on the Judge's Certificate. *Stat. 3 Jac. cap. 5.*

**No Recusant  
to come to  
Court, on pain  
of 100 *l.*  
Recusants to  
depart ten  
Miles from  
London.**

And no Popish Recusant shall come to Court, or into any House where his Majesty, or his Heir Apparent shall be, unless commanded so to do, on pain of forfeiting 100 *l.* between the Crown and the Informer. *lb.*

And all Popish Recusants who shall come, dwell, or remain within the City of London, or ten Miles thereof, who shall be indicted or convicted of such Recusancy, or shall not repair to some Church or Chapel and hear Divine Service, but forbear the same for the Space of three Months, shall, within ten Days after such Indictment or Conviction, depart from the said City of London, and ten Miles compass of the same; and also deliver up their Names to the Lord Mayor for the Time being, in Case such Recusant shall dwell within the said City of London or the Liberties thereof; and if he dwell in any other County within ten Miles of the said City, he shall deliver up his Name to the next Justice of Peace of the County where he shall dwell, within ten Days after such Indictment or Conviction, on pain of 100 *l.* to be divided between the Crown and the Prosecutor. *lb.*

**Those who  
live within  
ten Miles of  
London to give  
in their  
Names to  
some Justice  
of Peace.  
Recusants li-  
cenced to  
Travel by the  
Privy Coun-  
cil.**

A Clause in the 35 Eliz. c. 2. for licencing Recusants to Travel, is hereby repealed; and it is provided, that it shall be lawful for his Majesty, or three or more of the Privy Council, to licence every such Recusant to Travel for such Time as in the said Licence shall be contained, without any other Cause expressed in the Licence. And it shall be lawful for any Person to Travel, upon obtaining a Licence in Writing under the Hands and Seals of four Justices of Peace of the County or Place where such Recusant

**Or 4 Justices  
of Peace, &c.**

Recusant resides, with the Assent of the Bishop of the Diocese, or of the Lieutenant, or Deputy-Lieutenant of the County residing within the same, under their Hands and Seals; in which Licence shall be contain'd the particular Cause of granting it, and the Time, how long the Party shall be absent in travelling, attending, or returning; the Party so licens'd first taking his Oath before the said Justices, or one of them, That he hath truly inform'd them of the Cause of his Journey, and that he will not make any causeless Stays; and every Licence otherwise made, shall be void. *lb.*

And no Recusant Convict shall practise the Law, or Recusant dis-Physick, or exercise the Trade of an Apothecary, or be able to practise any Office, Civil or Military; and every Person offending herein shall forfeit 100 *l.* Nor shall any or Physick, or Person, whose Wife is a Popish Recusant Convict, exercise any publick Office or Charge in the Commonwealth, publick Office by himself or Deputy, unless such Husband, and his Children above nine Years of Age, and his Servants, shall Disabilities repair to the Church once a Month; and such of them as where they are of meet Age, receive the Sacrament at such Times as their Wife is a Recusant, are requir'd the Law, and bring up his Children in the true Religion. *lb.*

Every married Woman, being a Popish Recusant Convict, whose Husband is not, who shall not conform and receive the Sacrament according to Law, for one whole Year before her Husband's Death, shall forfeit to the Crown her Dower, the Issues and Profits of two Parts of her Jointure, and two Parts of her Dower, during her Life, and be disabled to be Executrix or Administratrix to her Husband, and to have any Part of his Goods or Chattels, by any Law, Custom, or Usage whatever. *lb.*

And every Popish Recusant Convict, shall stand and be Recusant reputed, to all Intents and Purposes, disabled, as a Person excommunicated, until he shall conform, come to Church, and receive the Sacrament, and take the Oath of Allegiance appointed by another Act of this Sessions. *lb.*

Provided that it shall be lawful for a Person so disabled But may sue to prosecute any Suit concerning such of his Lands, Tenements, Leases, Rents, Annuties, or the Issues and Profits thereof, as are not seiz'd into the King's Hands for Lands, not Recusancy. *lb.* seiz'd.

Every Man, being a Popish Recusant Convict, who shall be married otherways than in some open Church or marrying Chapel, according to the Church of England, shall be disabled to have any Estate of Freehold in the Lands of his Church or Wife, as Tenant by the Curtesy: And every Woman being a Popish Recusant Convict, who shall be otherwise

married, shall be disabled to claim any Dower or Joyn-ture in the Lands of her Husband, or his Ancestors, and also her Widow's Estate and Frank Bank in any Customary Lands; and shall be also disabled to enjoy any Part of her Husband's Goods, by Verrue of any Custom where the same shall lie. And if such Man marry with any Woman, contrary to the Intent of this Act, who hath no Lands whereof he may be Tenant by the Curtesy, he shall forfeit 100 l. to be divided between the King and the Informer. *lb.*

Recusant to have his Child baptiz'd at Church, on Pain of 100 l. And every Popish Recusant Convict, shall within one Month after the Birth of any Child, cause the same to be baptiz'd in some Church or Chapel, by a lawful Minister, upon Pain that the Father of such Child, if he live a Month after the Birth, or if he be dead, then the Mother shall forfeit 100 l. one Third to the Crown, another to the Informer, and the other to the Poor of the Parish. *lb.*

Pain of bury-ing a Recu-sant out of the Church or Church-yard. And if any Popish Recusant, not being excommuni-cated, shall be bury'd in any Place but the Church, or Church-Yard, and not according to Law, then the Exe-cutors or Administrators of every such Person knowing the same, or the Person causing him to be so bury'd, shall forfeit 20 l. one Third to the Crown, one Third to the Informer, and the other to the Poor of the Parish. *lb.*

Children sent beyond Sea, disabled to in-herit. And if the Children of any Subject, except Soldiers, Mariners, Merchants, or their Apprentices, shall be sent or go beyond Sea without Licence of the King, or Six of the Privy-Council, whereof the Principal Secretary to be one, under their Hands and Seals, they shall take no Bene-fit by any Gift, Conveyance, Descent, Devise, or other-ways, of, or to any Lands, Leases, Goods or Chattels,

Until they take the Oaths. until he or they, being Eighteen Years of Age, take the Oath of Allegiance before some Justice of the Peace where their Parents inhabit; and in the mean time, the next of Kin, being no Recusant, shall enjoy the said Lands, Leases, Goods, and Chattels, until the Persons so sent be-yond Sea, shall conform themselves, and take the said Oath, and receive the Sacrament; and after such Oath taken, &c. he who hath received the Profits of the said Lands, Goods, and Chattels, shall give an Account, and restore the same, with the Profits thereof, to the Person conforming; and every Person sending such Child beyond Sea, shall forfeit 100 l. to be divided as aforesaid. *lb.*

Recusant dis-abled to pre-sent to a Liv-ing. Every Popish Recusant Convict, during the Time he shall remain such, shall be disabled to present to any Be-nefice, with Cure, or without Cure, Prebend, or other Ecclesiastical Living, or to collate or nominate to any Free-School, Hospital, or Donative, and be disabled to grant



grant any Avoidance of any Benefice, Prebend, or other Ecclesiastical Living. *Ib.*

And the Chancellor and Scholars of the University of And his Right Oxford, shall present to all such Benefices, &c. as lie in devolv'd on the Counties of Oxford, Kent, Middlesex, Sussex, Surrey, the Universities of Hampshire, Berkshire, Buckinghamshire, Gloucestershire, Wiltshire, Staffordshire, Warwickshire, Wiltshire, Somerset-Oxford Lishire, Devonshire, Cornwall, Dorsetshire, Herefordshire, Northamptonshire, Pembrokeshire, Carmarthenshire, Brecknockshire, Monmouthshire, Cardiganshire, Montgomeryshire, the City of London; and in every City and Town, being a County of itself, and lying within the Counties aforesaid, as shall happen to be void during such Time as the Patron shall remain a Popish Recusant Convict. *Ib.*

And the University of Cambridge shall have the Presentation of all Benefices, &c. lying in the Counties of Hertfordshire, Bedfordshire, Cambridgeshire, Huntingdonshire, Suffolk, Norfolk, Lincolnshire, Rutlandshire, Leicestershire, Derbyshire, Nottinghamshire, Shropshire, Cheshire, Lancashire, Yorkshire, the County of Durham, Northumberland, Cumberland-Westmorland, Radnorshire, Denbighshire, Flintshire, Carnarvonshire, Angleseyshire, Merionethshire, Glamorganshire, and in every City and Town within the said Counties. *Ib.*

Provided, That neither of the said Universities shall No Pluralists present any Person to any Benefice with Cure, Prebend, to be present or other Ecclesiastical Living, that shall have another Benefice with Cure of Souls; and if they do, such Presentation shall be void. *Nb.*

And no Person who shall be a Popish Recusant Convict at the Death of any Testator, or at the Time of granting any to be Executor or Administrator, or have the Custody of any Child, as Guardian, or be Guardian, &c. in Nurture, of any Lands, Freehold, or Copyhold; and the next of Kin of such Child or Children, being no Recusant, shall have the Custody of them, and their Lands and Tenements, until the Age of the Ward.

No Person shall import Popish Books on Pain of Forty Shillings for every Book; and it shall be lawful for any Popish Books two Justices of the Peace, and to all Mayors, Bailiffs, and chief Officers of Towns Corporate, to search the Houses to be burnt and Lodgings of every Popish Recusant Convict; and of every Person whose Wife is such, for Popish Books and Reliques; and if any Altar-piece, Beads, Pictures, or such like Popish Reliques, or any Books shall be found, which in the Opinion of the Justices shall be unmeet for such Recusant to use the same, shall be defac'd and burnt; but if it be a Crucifix, or other Relique of Price, the same shall be defac'd at the Quarter-Sessions, and restor'd to the Owner again. *Ibid.*

Recusants  
Arms to be  
seiz'd.

And all such Armour, Gunpowder, and Ammunition, as any Popish Recusant shall have in his House, or elsewhere, shall be seiz'd by Warrant from four Justices of the Peace at the Quarter-Sessions, except such necessary Weapons as shall be allow'd for the Defence of such Recusant, or his House; and the said Armour and Ammunition shall be kept at the Cost of such Recusant, in such Places as the said four Justices shall appoint. *Ib.*

Pain of con-  
cealing them.

And if any Recusant, who shall have such Armour or Ammunition, or any other Person, for his Use, shall refuse to discover the same, or shall hinder the Delivery thereof to the said Justices, or any Person appointed by them to seize the same; such Offender shall forfeit the said Armour and Ammunition, and be imprison'd for three Months by Warrant from any Justice of the County; and such Recusant shall, notwithstanding the taking away the said Armour, &c. be charg'd with maintaining the same, and with providing and maintaining of Horse and other Armour and Ammunition, as other Subjects are. *Ib.*

Persons going  
or sending a-  
ny to a Semi-  
nary.

3 Car. 1. c. 2.

The Statute of 1 Jac. 1. cap. 4. shall be put in Execution: And be it further enacted, That if any Subject of this Realm shall pass or go, or shall convey or send, or cause to be convey'd or sent, any Child, or other Person, out of the King's Dominions, into any Foreign Parts beyond the Seas, to the Intent to enter into, be resident, or train'd up in any Religious House, Popish College or School, or in any private Popish Family, and shall be by any Jesuit, Popish Priest, or other Popish Person, instructed, perswaded, or strengthen'd in the Popish Religion, or shall convey or send, or cause to be convey'd or sent, any Sum of Money or other Thing, for the Maintenance of any Child, or other Person to be sent and instructed as aforesaid, or under the Colour of Charity or Benevolence towards the Relief of any Religious House, College, or School; every such Offender being convicted upon any Information, Presentment or Indictment, shall be disabled to sue in Law or Equity, to be

Disabled to  
sue, &c. and to  
forfeit all  
their Goods,  
and the Pro-  
fits of their  
Lands for Life.

Persons con-  
forming, &c.  
restor'd.

Guardian, Executor, or Administrator, and incapable of a Legacy or Deed of Gift, or to bear Office within this Realm, and shall forfeit all his Goods and Chatels, and his Lands Rents, Annuities, Offices and Estates of Freehold, for Life, Stat. 3 Car. 1 cap. 2.

Provided, That no Person sent as aforesaid, who shall within six Months after his Return into this Realm, conform himself to the Establish'd Church, and receive the Sacrament according to the Statutes, shall incur any of the said Penalties. *Ib.*

The

The said Offences to be try'd before the Justices of the King's Bench, the Justices of Assize, Oyer and Terminer, and Jail Delivery of such County where the Offender last dwelt, or whence he departed out of the Realm. *1b.*

Provided also, That such Person or Child, so conforming, shall have his Lands restor'd to him for such Time as he shall continue in such Conformity. *1b.*

The Lord Mayor of London, and every Justice of Peace *1 W. and M.* of the Cities of London and Westminster, and of the Borough of Southwark, and of the Counties of Middlesex, Surrey, Kent and Sussex, within their respective Districts, in ten Miles are requir'd to arrest, and cause to be brought before them of London, every Person not being a Merchant Foreigner within the fusing the De- said Cities, or ten Miles of the same, as are Papists, or cleration a- reputed Papists, and tender them the Declaration contain- gainst Tran- ed in the 31 Car. 2. cap. 1. against Transubstantiation. substantion, And if such Person shall refuse audibly to repeat and sub- adjudg'd Re- scribe the said Declaration, and afterwards shall continue cufants Con- in the said Cities, or Ten Miles Distance from the same, vict. he shall forfeit and suffer as a Popish Recusant Convict;

And every Justice of Peace is requir'd to certify every Subscription taken before him, and also the Names of the Refusers, under his Hand and Seal, into the King's Bench, the next Term, or to the next Quarter-Sessions; and if such Refuser shall not appear in the next Term or Sessions where such Certificate shall be return'd, and make and subscribe the said Declaration, and indorse his so doing upon the Certificate so return'd, he shall from the Time of such Neglect or Refusal, be adjudg'd a Popish Recusant Convict. *Stat 1 W. & M. c. 9*

Provided that this Act shall not extend to any Per- Not to extend sons who now use any Trade, Mystery, or Manual Occu- to Tradesmen pation in London and Westminster, or within Ten Miles of or House the same, or to those who had their Dwellings or Places Dwellers. of Abode within that Compass, Six Months before the 13th of February 1688, not having any Dwelling or Place of Abode elsewhere, so as such Person before the 1st of August 1689, certify his Name and Place of Abode to the Sessions of the Peace where he shall dwell. *1b.*

Nor shall this Act extend to any Foreigner, being a Me- Or to Fo- nial Servant to any Ambassador or publick Agent. *1b.* reigners.

Any two or more Justices of the Peace, who shall know *1 W. and M.* or suspect any Person to be a Papist, or shall be inform'd *c. 15.* that any Person is suspected to be a Papist, are hereby Declaration authoriz'd and requir'd forthwith to tender to such Per- against Tran- son the Declaration in the 30 Car. 2. cap. 1. against Tran- substantia- substantiation; and upon a Refusal to repeat and sub- tion to be ten- scribe the said Declaration, or to appear before the said der'd to suspe- Justices, cted Persons.



# PAPISTS and POPISH RECUSANTS.

Justices, upon a Summons left at his usual Place of Abode, by any Person authoriz'd under the Hands and Seals of the said two Justices, such Person shall be liable to all the Pains, Forfeitures, and Disabilities in this Act. Stat. 1. W. & M. c. 15.

And the said Justices shall certify the Name and Place of Abode of every Person refusing or neglecting to make the said Declaration, or to appear upon Summons; as also of every Person who shall make the said Declaration, to the Quarter-Sessions, there to be recorded. *Ib.*

Recusant to  
keep no Arms.

And no Papist, or reputed Papist, so refusing or making Default as aforesaid, shall keep in his House, or elsewhere, in the Possession of himself, or any other to his Use, any Arms, Gunpowder, or Ammunition, other than shall be allow'd him by the Quarter-Sessions for the Defence of his House or Person; and any two or more Justices, may from Time to Time, by their Warrant, empower any Persons in the Day-time, with the Assistance of the Constable, or his Deputy, or the Tything-man or Heaborough, to search for Arms, &c. in the House or Possession of such Papist, or reputed Papist, and seize the same to the King's Use; and shall at the next Quarter-Sessions deliver the said Arms, &c. in open Court, for the Use aforesaid. *Ib.*

But deliver  
them to some  
Justice of  
Peace.

And every such Papist, &c. who shall not within ten Days after such Refusal or Default as aforesaid, deliver to some of his Majesty's Justices of Peace, all Arms, &c. which he shall have in his House, or elsewhere, or shall be in the Possession of any Person, to his Use, or shall hinder any Person authoriz'd as aforesaid, to seize the same, he shall be committed to Jail by two Justices of the Peace, for three Months, without Bail or Mainprize, and shall forfeit the said Arms, and treble the Value of them, to the King's Use, to be apprais'd by the Justices at the next Quarter-Sessions. *Ib.*

On Pain of  
three Months  
Imprison-  
ment, and  
Forfeiture of  
the Treble  
Value.

And every Person who shall conceal, or be privy to the concealing such Arms, or who knowing thereof, shall not discover them to some Justice of Peace, or shall hinder any Person authoriz'd as aforesaid, in searching and seizing the same, he shall in like Manner be committed to Jail for three Months, without Bail or Mainprize, and forfeit treble the Value of such Arms. *Ib.*

Reward for  
Discovery of  
them.

And if any Person shall discover any conceal'd Arms, Gunpowder, &c. belonging to such Refusers, so as the same may be seiz'd, the Quarter Sessions shall allow to such Discoverer a Sum of Money amounting to the full Value of the said Arms discover'd, to be assess'd by the Sessions.

Sessions, and levy'd by Distress and Sale of the Goods of the Person offending against this Act. *Ib.*

Provided that if any such Refuser shall desire to submit and conform, and shall present himself to the Quarter-Sessions, where his Refusal shall be certify'd, and in open Court make the Declaration in 30 Car. 2. cap. 1. against Transubstantiation, he shall be from thenceforth discharg'd of all Disabilities and Forfeitures which he might be liable to for his Refusal. *Ib.*

And no such Refuser shall have or keep in his own Possession, or in the Possession of any other Person, to his Use, any Horse above the Value of 5 *l.* and any two Horses above or more Justices of the Peace, may by Warrant authorize any Persons, with the Assistance of the Constable, or his Deputy, or the Tything-man or Headborough, to search and seize to his Majesty's Use, all Horses above that Value which are hereby declar'd to be forfeited: And if any Person conceal, or assist in concealing any such Horses belonging to such Refuser, he shall be committed to Prison by Warrant, as aforesaid, for three Months, and forfeit to the Crown treble the Value of such Horses, to be settled as aforesaid. *Ib.*

Whereas by an Act of 3 Jac. 1. c. 5. every Popish Recusant Convict is disabled to present to any Benefice, School, Hospital, or Donative, or grant any Avoidance thereof, it is hereby enacted, That whosoever shall refuse

to make and subscribe the Declaration required by an Act of this present Parliament, (viz. 1 W. and M. c. 9. entitled, *An Act for the better securing the Government, by disarming Papists, &c.* when the same shall be tender'd by any two or more Justices of the Peace; or shall forbear to appear before them upon Notice, and shall thereupon have his Name, &c. certify'd and recorded at the General Quarter Sessions, as in the said Act is appointed, such Person shall from thenceforth be disabled to make any Presentation, Collation, &c. or Grant of any Avoidance of any Benefice, &c. as fully as if he were a Popish Recusant Convict by the Statutes of this Realm. And the Universities respectively, shall have the Presentation, &c. to every such Benefice, &c. lying in their respective Limits, according to the said Act of 3 Jac. 1. c. 5. Stat. 1 W. & M. c. 26.

And it is further enacted, That where any Person shall be seiz'd or possess'd of any Adowson, Right of Presentation, &c. in Trust for any Papist or Popish Recusant, disabled by the said Statute of 3 Jac. 1. c. 5. or by this present Act, such Person, so seiz'd, &c. in Trust for any Papist or Popish Recusant, shall be disabled to present, &c.

or

or grant any Avoidance; and their Presentations, &c. and Grants shall be void, and the Universities respectively shall have the Presentation, &c. *Ib.*

And if any Trustee, Mortgagee, or Grantee of any Avoidance, shall present, &c. to any Ecclesiastical Living, &c. where the Trust shall be for any Recusant Convict, or disabled without giving Notice of the Avoidance in Writing to the Vice-Chancellor of the University, to whom the Presentation shall belong, within three Months after the Avoidance, he shall forfeit 500*l.* to the University to which the Presentation, &c. shall belong, to be recover'd by Action of Debt, &c. *Ib.*

**Pluralists.**

Provided, that if either University present any Person who shall then have another Benefice, with Cure, such Presentation shall be void. *Ib.*

**Absence.**

Provided, that if any Person presented to any Benefice with Cure, be absent from it sixty Days in any one Year, his Benefice shall be void. *Ib.*

**Personstaking the Oaths re- stor'd.**

Provided, that if any Person disabled, shall present himself at the Quarter-Sessions, and make and subscribe the said Declaration, and take the Oaths appointed by an Act of 1 *W. & M. c. 9.* entitled, *An Act for Abrogating the Oaths, &c.* he shall be discharg'd from all Disabilities incurr'd by this Act, and be enabl'd to present, &c. for the future. *Ib.*

**11 & 12 W. 3.**

**c. 4.**

**Persons apprehending a Popish Priest, to have a Reward of 100*l.***

Every Person who shall apprehend one or more Popish Bishop, Priest or Jesuit, and prosecute him till he be convicted of saying Mass, or executing any other Parts of the Office of a Popish Bishop or Priest, shall receive from the Sheriff of the County, *gratis*, for every such Offender, so convicted, 100*l.* within four Months after such Conviction, and Demand thereof made, by tendering a Certificate under the Hand of the Judge or Justices, certifying the Conviction, and that such Popish Priest, &c. was taken by the Person claiming the Reward. And the said Judge, &c. shall by the said Certificate, direct the said Reward to be paid among the Parties claiming the same, in such Proportions as he shall judge reasonable. And if any Sheriff shall die, or be remov'd within four Months after such Conviction, the said Reward not being paid, the succeeding Sheriff shall pay the same within two Months after Demand and Certificate brought as aforesaid. And every Sheriff making Default in Payment of the said Sums, shall forfeit to the Person to whom such Money is due as aforesaid, 200*l.* to be recover'd in the Courts at *Westminster*, with full Costs. *Stat. 11 and 12, W. 3. c. 4.* And all Sheriffs producing such



such Certificates, or Duplicates thereof, shall be paid the Monies contain'd therein by the Treasury. *1b.*

And if any Popish Bishop, Priest, or Jesuit whatsoever, Priest saying shall say Mass, or exercise any other Part of his Office in Mass, &c. Or their Majesties Dominions; or if any Papist shall keep any Papist School, or take upon him the Education, Government, teaching or Boarding of Youth; such Person, being convicted thereof, shall be adjudg'd to perpetual Imprisonment, in to suffer per- such Places within this Kingdom, as the King, by Ad- petual Impri- vice of the Privy Council, shall appoint. *1b.* sonment.

Provided, that this Act shall not extend to any Popish Foreigners, Priest for saying Mass, or officiating in the Dwelling-Chaplains to House of any Foreign Minister residing here; so as Foreign Mi- such Priest be not a Subject of these Realms, and his nisters, ex- Name, and the Place of his Birth, and the Foreign Mi- cepted. nister to whom he belongs, be enter'd in the Secretary's Office. *1b.*

And whereas by an Act made in the Third Year of Reward of King James I. c. 5. Any Person convicted of sending a 100/. to any Child beyond Sea, to be educated in the Romish Religion, who shall di- is to forfeit 100/. to be divided between the King and the scover the Informer; it is hereby enacted, That the said Sum of sending a 100/. shall be to the sole Use of the Person who shall Child to a Se- discover and convict any such Offender. *1b.* minary.

And if any Popish Parent shall refuse to allow any Popish Parents Protestant Child a fitting Maintenance, suitable to his to maintain Ability, the Court of Chancery shall make such Order their Prote- therein, as shall be agreeable to the Intent of this Act. *1b.* stant Children

Whereas by an Act of 3 Jac. I. c. 5. and one other 12 Ann. c. 14. Act, 1 W. & M. c. 26. the Presentation to Benefices, &c. belonging to Popish Recusants and other Persons thereby disabled to present, is given to the Universities; but such Patrons being seldom duly convicted, those Provisions are rendered ineffectual; therefore, for the speedier and easier vesting such Presentations in the Universities, it is hereby Papists not enacted, That every Papist, or Person making Profession convicted, to of the Popish Religion, and every Child, not being a Pro- lose their Pre- testant, under Twenty one Years of Age, of every such sentations. Papist, &c. And every Mortgagee, Trustee, or Person any Their Trustees ways entrusted, directly or indirectly, mediately or im- disabled to mediately, by or for any such Papist, &c. whether such present. Trust be declar'd by Writing or not, shall be disabled to present, collate, or nominate to any Benefice, Prebend, or Ecclesiastical Living, School, Hospital, or Donative, or to grant any Avoidance: And every such Presenta- tion, &c. and every Admission, Institution, or Indu- ction thereupon, shall be void; and the Universities re- spectively, shall have the Presentation, &c. to every such Benefice,

Benefice, &c. lying within their respective Limits, mention'd in the said Act of 3 Jac. 1. c. 5. Stat. 12 Ann. c. 14.

Ordinary to tender suspect-  
ed Persons the  
Declaration  
against Tran-  
substantiation

And when any Presentation to a Benefice shall be brought to the Ordinary, of a Person reputed to be, or whom such Ordinary shall have Cause to suspect to be a Papist, or Trustee for a Papist or suspected Papist, the Ordinary is requir'd to tender to every such Person, if present, the Declaration against Transubstantiation, contain'd in the 25 Car. 2. c. 2. And in Case such Person be absent, the Ordinary shall by Notice in Writing, to be left at his Habitation, appoint some Time and Place where such Person shall appear before such Ordinary, or some Persons authoris'd by his Commission, and upon such Appearance shall tender the said Declaration to the

And on Refusal, to certify the same to the University.

Who shall have that Turn.

Presentee to be examined upon Oath by the Ordinary, if the real Patron be a Papist, &c.

And on refusal to answer, the Presentation to be void

Universities and their Presentees may bring a Bill in Chancery against Patrons and Trustees for Discovery.

Person making such Presentation; and if he shall refuse to make and subscribe the said Declaration, or to appear before the Ordinary upon such Notice as aforesaid, such Presentation shall be void, and the Ordinary shall within ten Days after such Neglect or Refusal, certify such Neglect or Refusal under the Seal of his Office, to the Vice-Chancellor of the University to whom such Presentation would belong, if the Patron was a Popish Recusant; and the Presentation to such Benefice for that Turn only, shall be vested in the said University. *Ib.*

And when any Presentation shall be brought to the Ordinary, he is hereby required, before he give Institution, to examine the Person presented upon Oath, Whether, to the best of his Knowledge and Belief, the Person who made such Presentation be the real Patron, or made the same in his own Right, or whether he be not mediately or immediately, directly or indirectly Trustee for some other, and what Person by Name who is a Papist, or makes Profession of the Popish Religion, or the Children of such, or for any other, and what Person or Persons, or what he knows, has heard, or believes concerning the same? And if such Person presented shall not answer directly thereto, then such Presentation shall be void. *Ib.*

And it shall be lawful for the Chancellor and Scholars of either University to whom the Presentation shall belong, if the Patron was a Popish Recusant, and their Presentees or Clerks, for the better Discovery of such secret Trusts created by Papists, &c. to exhibit a Bill in any Court of Equity against the Person presenting; and such Persons as they have Reason to suspect to be the *Cessuy que* Trust of the Advowson, &c. or any other Person whom they have cause to suspect may be able to make a Discovery of such secret Trusts: And in Case the

the Defendants shall not answer the said Bill in such Time as shall be allowed by the Court, the said Bill shall be taken *pro Confesso*, and be allowed as Evidence against such Person neglecting to answer his Trustees and Clerk. *1b.*

Provided, that all Persons having fully answered, and not knowing any Thing of such Trust, shall be entitled to Costs. *1b.*

And it shall be lawful for the Court where any *Quare Patrons, &c.* *impedit* shall be depending, at the Instance of the Chancellor and Scholars, or their Clerk, being Plaintiffs or the Courts of Defendants, by Motion in open Court to make a Rule Law upon requiring Satisfaction, upon the Oath of such Patron and Oath as to his Clerk who shall contest the Right of the said University, by Examination of them in open Court, or by Commission under the Seal of such Court, or by Affidavit as the said Court shall think proper, in order to discover any secret Trust relating to the Presentation; and if it appear upon such Examination, that the Patron is but a Trustee, then the said Patron and his Clerk shall discover who such Persons are, and where they inhabit; and upon their Refusal to make such Discovery, they shall be punished as for a Contempt. And in Case such Patron or his Clerk discover the Person for whom the said Patron is Trustee, the Court upon Motion shall make a Rule, that the Person for whom the Patron is Trustee, shall in the said Court, or before Commissioners, make Patron refuse and subscribe the Declaration against Transubstantiation sing the Declaration against Transubstantiation, and on Pain of incurring a Contempt, give such further Satisfaction upon Oath concerning the said Trust as the Court shall think fit; and such Person refusing to make the said Declaration shall be deemed a Popish Recusant Convict in respect of such Presentation. *1b.*

And the Answer of such Patrons, and the Person for whom they are entrusted, and his and their Clerks, and their Examinations and Affidavits taken as aforesaid, by Order of any Court, or by the Ordinary, shall be allowed as Evidence against such Patron so presenting, and his Clerk. *1b.*

Provided that no Bill, or any Discovery made by the Answer thereto, or to any such Examination, shall subject the Person making such Discovery or not Answering, to any other Penalty than the Loss of the Presentation. *1b.*

And in Case of any such Bill exhibited in any Court of No Lapse till Equity, by either University or their Presentee, no Lapse three Months shall incur or Penalty be a Bar till after 3 Months after the Answer put in.



the Answer put in, or the Bill be taken *pro Confesso*, or the Prosecution deserted, provided that such Bill be exhibited before any Lapse incurred. *Ib.*

And it is declared, That the respective Chancellors and Scholars of the said Universities are entitled to sue a *Quare impedit* by the Name of the Chancellor and Scholars, &c. or by their respective proper Names of Incorporation at their Election. *Ib.*

And in Case any Trust for a Papist, &c. be confessed or discovered by any such Answer or Examination as aforesaid, the Court where such Discovery is made is hereby enabled to enforce the producing the Deeds relating to the said Trust, by such Methods as they shall think proper. *Ib.*

Deeds to be produced.

Scotland.

And it is hereby enacted, That the Lords of Justiciary in Scotland shall be empowered to inflict the same Punishments upon Jesuits, Priests, and other trafficking Papists, as the Privy Council of Scotland were empowered to do by an Act passed there in the eighth Session of the first Parliament of King William, entitled, *An Act for preventing the Growth of Popery.* *Ib.*

1 Geo. c. 55.  
Papists to take the Oaths by the 20th of January 1716.

Every Person not having taken the Oaths before the last Day of Trinity Term 1716, having any Estate, or Interest in any Lands, Tenements or Hereditaments, lying in England, Wales, or Berwick, who is a Popish Recusant Convict, or Papist, or educated in the Popish Religion, or whose Parent shall be a Papist, shall, if then of Age, on or before the 20th of January 1716, or within six Months after he shall attain such Age, and have such Estate or Interest as aforesaid, take the Oaths appointed by 1 Geo. c. 13. and make and subscribe the Declaration against Transubstantiation in the 30 Car. 2. c. 3. in the Court of Chancery, King's Bench, Common Pleas, or Exchequer, or at the Quarter Sessions where such Lands or some Part thereof shall lie; and in default thereof shall within six Months after the Time hereby appointed for taking the said Oaths, and so from Time to Time within six Months after they, or any Trustees for them or their Benefit, shall come into the Possession of the Rents and Profits of any other Lands, Tenements or Hereditaments, register their Names; and all such Lands, Tenements and Hereditaments whereof they, or any Trustees for them or their Benefit, shall be in Possession, or Receipt of the Rent or Profits, and shall express in such Register in what Parish or Place such Lands, &c. lie, and who are the Possessors thereof, and what Estate or Interest the Person registering has in the same, and the yearly Rent reserved if Let, and if the same be Let upon

Or within 6 Months after, register their Lands.

And so within 6 Months after they come into Possession of any other Lands, &c.

upon Lease, by whom such Lease was made, what Rent reserved, and what Fine was paid for such Lease, in case the same was made by himself, or any Person in Trust for him, or he was Party or privy thereto, in a Parchment-Book to be kept by the Clerk of the Peace where such Lands, &c. lie. Stat. 1 Geo. c. 55.

And every Person, whose Estate shall be registred as Register to be aforesaid, is hereby obliged to take care that his Name be subscribed by subscribed to such Register, in the Presence of two or the Party, in more Justices of the Peace, either by himself or his At-Presence of torney, lawfully authorized by Warrant of Attorney, two Justices executed in the Presence of two or more Witnesses, two of of Peace. which Witnesses at least, shall make Proof of such Execution upon their Oaths, at the Quarter-Sessions; and two of the Justices then present, shall subscribe their Names to every such Entry, as Witnesses that the same was duly made, on Pain of 20*l*. And the Clerks of the Peace Fees for Regi- are requir'd to keep Parchment Books or Rolls, and to string and make the said Entries or Registers therein upon Request, Search. the Party desiring such Registry to be made, paying the Clerk of the Peace the Fees appointed by this Act, and delivering to him in Writing the Words desir'd to be register'd, ten Days before the Quarter-Sessions where the Entries are to be subscribed: And the Clerk of the Peace shall keep Alphabetical Tables of the Names of the Persons and Lands registred, and shall have for such Registry a Fee of 3*d*. for every Two Hundred Words, and no more, and 4*d*. for every Search for the Name or Estate of any Person. *lb*.

And such Clerk of the Peace is required to give Copies Copies to be of such Registries, subscribed by himself or his Deputy, to given. every Person desiring the same, and rendring his Fees, and to examine the same, for which he shall have a Fee of 3*d*. for every Two Hundred Words. And if any Clerk of the Peace shall neglect or refuse to do any of the Things hereby appointed, he shall forfeit his Office. *lb*.

And if any Person required to take such Oaths, and subscribe such Declaration as aforesaid, or in Default thereof to register his Name and Estate as aforesaid, shall neglect or refuse so to do, or commit any Fraud in such Registry, he shall forfeit the Fee-Simple, and Inhe- Lands forfeit- rance of all such Lands, Tenements, and Heredita- ed for default ments, nor registred, or fraudently reigstred, whereof of registering. he, she, or they, or any in Trust for him, her, or them, are seized in Fee-Simple at the Time of such Default or Fraud in registering: And the full Value of the Inheri- tance of all such Lands, Tenements, and Hereditaments not registred, or fraudently registred, whereof he, she,

Proof of regi-  
string to lie  
on the De-  
fendant.

or they, or any in Trust for them, were not seised in Fee-Simple at the Time of such Default or Fraud; two Thirds to the Crown, and the other Third to such Person, being a Protestant, as shall sue for the same; and the Person so suing in Chancery, shall be entitled to demand all such Discoveries, as he might if he were a Purchaser upon a valuable Consideration, to which Bill no Demurrer shall be allow'd, but the Defendant shall sufficiently answer the same at large, and the Person suing for any such real Estate, may bring an Ejectment upon his own Demise, and give this Act and the special Matter in Evidence: And if the Defendant shall not make it appear that he has taken the said Oaths, or registered his Name and Estate, a Verdict shall be given for the Lessor of the Plaintiff, and Judgment had thereupon; and the Lessor of the Plaintiff shall have his Costs, and two Thirds of the Lands recovered, shall be vested in the Crown, and the other Third in the Lessor of the Plaintiff. *1b.*

Provided, that Persons who shall be beyond Sea on the 18th of June 1716, shall not be compellable to take the said Oaths, and make the Declaration aforesaid, until the 20 of May 1717, or to register their Estates until six Months after the said 20th of May 1717. *1b.*

Purchasers  
not preju-  
diced by the  
Sellers Default  
in registering.

Provided, that if any Person so making Default, or committing any Fraud in registering, shall before Conviction, or any Suit brought for such forfeited Lands, &c. sell or incumber the same for a valuable Consideration, the Purchaser or Grantee not knowing thereof, shall not be prejudiced in his Estate, or Interest in the said Lands, &c. but the Offender shall forfeit the Value of the Inheritance of such Lands, to be distributed and recovered as aforesaid. *1b.*

None obliged  
to register till  
they have  
been six  
Months seised

Provided, that no Person be compelled to register any Lands, &c. until he, or some other Person in Trust for him, shall be actually seised, and have Notice thereof, or be possessed, or in Receipt of the Rents and Profits for the Space of six Months.

of the Lands,  
or Profits of  
the Rents.

Tenants at  
Rack Rents,  
not obliged to  
register,  
Saving for  
Creditors.

Provided that no Tenant at a Rack Rent, or who shall hold Leases, whereupon two Thirds of the full Value shall be reserved, shall be compelled to register. *1b.*

Nor shall this Act extend to defeat any Creditor who shall *bona fide* have any Charge or Incumbrance on any real Estate required to be registred; but in such Case the Person making default shall forfeit the Value of such Charge or Incumbrance, to be recovered and distributed as aforesaid. *1b.*



## PAPISTS and POPISH RECUSANTS. 307

Every Person in the *West Indies* shall be allowed twelve Months longer to take the Oaths, and register their Estates, than the Time before allowed to Persons beyond the Seas. *1b.*

No Action for any Pain or Forfeiture contained in this 3 *Geo. c. 18.* or the former Act for neglecting to register, or committing Fraud in such Registry, shall be brought above two Years after the Offence committed. *Stat. 3 Geo. c. 18.* after two Years

And where any Mannors, Demesne or other Lands, or entire Farms, lie in more Counties than one, the Registering of the same in the County only where the Mannor-ty where the House, or the House or Houses to the said Farm or Lands House is, do lie, taking Notice that the same do extend to such other County or Counties, shall be a sufficient Registering of such Mannors, Farms and Lands, within the Intent of the said recited Act. *1b.*

And whereas some Doubts have arisen upon the said recited Act, and also upon the 11th and 12th *W. 3. c. 4.* and upon the 1 *Jac. 1. c. 4.* touching the Sale of the real Estates of Persons professing the Popish Religion, or incurring the Disabilities and Incapacities in the said Acts mentioned: It is hereby enacted, That no Sale for a full and valuable Consideration of any Mannors, Lands, &c. Recusant's or of any Interest therein by any Persons reputed Owners, Lands to a or in Possession or Receipt of the Rents or Profits thereof, Protestant, to to or for any Protestant Purchasers, and only for the Benefit of Protestants, shall be avoided or impeach'd by reason of Notice of son of any Disabilities or Incapacities in the said Acts, in the Claimant's cur'd by any Persons making or joining in such Sale, or Title before by any other Person thro' whom the Title to such Mannors, Lands, &c. or any Interest therein shall be derived, unless before such Sale, the Person entitled to take Advantage of such Disabilities, shall have recovered such Lands, &c. or given Notice of his Title thereof to such Purchaser, or before the Contract for such Sale shall have claimed the said Lands, &c. by reason of such Disability or Incapacity, and have entered such Claim in open Court, at the general Sessions of the Peace for the County, City, Riding, or Division where such Lands lie, and *bona Fide*, with due Diligence, pursued his Remedy for Recovery thereof. *1b.*

Provided, that whereas it was enacted by the said Act of 11 & 12 *W. 3.* That after the 10th of April 1700. every Papist should be disabled to purchase to him, or to his Use, or in Trust for him, any Lands, &c. And that all Purchases made to or for the Use of such Person, or upon Trust, mediately or immediately for him, should be void; It is hereby declar'd and enacted, That the said recited

Papists disabled to purchase Lands.

Part of the said Act shall not be hereby altered or repealed, but remain in full Force. *Ib.*

**No Sale or De-vice of Papists Lands to be good, unless enroll'd in six Months.** And it is enacted, that after the 29th of September 1717, No Mannors, Lands, &c. or any Interest therein, or Rent or Profit thereout, shall pass, alter or change from any Papists, by Deed or Will, unless such Deed, within six Months after the Date, and such Will within six Months after the Death of the Testator, be enroll'd in one of the Courts at *Westminster*, or in the County where the Lands lie, by the *Custos Rotulorum*, and two Justices of the Peace, and the Clerk of the Peace of the same Counties, or two of them at least, whereof the Clerk of the Peace to be one. *Ib.*

**9 Geo. c. 24.**

**Persons not taking the Oaths before the 25th of Decem. 1723.**

**to register before the 25th of March 1724.**

**Subjects of Scotland not taking the Oaths,**

**by the 25th March 1724.**

Every Person in *England* and *Wales*, being eighteen Years of Age, who has not taken the Oaths appointed by the 1 Geo. c. 13. and who shall neglect to take the said Oaths, on or before the 25th of December 1723. in the Courts at *Westminster*, or at the Quarter-Sessions of the County, City, or Place where he resides, shall, on or before the 25th of March 1724, register his Name and real Estate, in such manner as Papists are oblig'd to register them by the 1 Geo. c. 5. And the 3 Geo. c. 18. and the respective Officers, appointed by the said last mentioned Acts of 1 & 3 Geo. to register the Name and real Estates of Papists, are hereby authorized to register the Names and real Estates appointed to be registered by this Act, in such Manner as is prescribed by the said last mentioned Acts, and shall return true Copies of the same, under their Hand, into the Court of Exchequer, on or before the 29th of September 1724. *Stat. 9 Geo. c. 24.*

And every Article or Clause in the said last mentioned Acts for registering the Names and real Estates of Papists, shall extend to all and every the Registers required to be made by this Act. *Ib.*

And every Papist, and reputed Papist, and every other Person in *Scotland*, being eighteen Years of Age, or upwards, not having taken the Oath of Allegiance, subscribed the Assurance, and taken the Oath of Abjuration appointed to be taken and subscribed by Persons in Office, by the 1 Geo. c. 13. who shall neglect to take and subscribe the same, on or before the 25th of March 1724, in the Court of Session, Court of Justiciary, or Court of Exchequer in *Scotland*, or at the Quarter-Sessions of the County, City, Town, or Liberty where such Persons shall live or inhabit, or before the Sheriffs or Stewards, or their Deputies, in open Court, held for the Shire, Stewartry, City, or Borough respectively: Every such Papist, or reputed Papist, and every other Person neglecting to subscribe and take the said Oaths and Assurance as afore-

said

said, shall before the 24th of June 1724, register their Names and real Estates in the Sheriff's Court of such Shire before Mid-or County wherein their Estates respectively lie, as Papists in England are obliged to register their Names and real Estates, by 1 Geo. c. 55. & 3 Geo. c. 18. And such Sheriff, or Sheriffs Deputies, are required to take such Registrations as are required to be made, and keep such Books, and make such Entries as the Clerk of the Peace in England, by Vertue of the said Act of 1 Geo. c. 55. are required to make and keep, and sign and return true Copies of such Registrations, into the Exchequer in Scotland, on or before the 29th of September 1724. *Ib.*

And every Article and Clause in the said last mentioned Acts, relating to the receiving, taking, and entering the Registers of the Names and real Estates of Papists, and examining upon Oath, or otherwise, into the Truth of the same, shall extend to all Registrations to be made in England, in Scotland, and give the same Powers to the said Sheriffs, or Sheriffs Deputies, as by the said last mentioned Acts are given to Justices of Peace in their Quarter-Sessions, and Clerks of the Peace in England. *Ib.*

And if any Person required to take the said Oaths, &c. On Pain of or in Default thereof, to register his Name and real Estate, shall not take the said Oaths, &c. or register according to this Act, he shall forfeit the Fee-Simple, and Inheritance, or such Estate and Interest in all such Lands, &c. not registred, whereof he, or any in Trust for him, was seised in Fee, or otherwise interested in at the Time of such Default, two Thirds to the Crown, and the other Third to such Persons, being Protestants, as shall sue for such forfeited Lands, &c. lying in England, in such Court, and by such Means as are directed by the said recited Acts, to oblige Papists to register, and shall sue in the Court of Exchequer in Scotland, for such forfeited Lands, &c. as shall lie in Scotland. *Ib.*

Provided, that this Act do not extend to any Person beyond Sea, so as such Person within six Months after his Return to Great-Britain, take and subscribe the said Oaths, and have further Assurance, or make such Registry according to this Act. *Ib.*

And if any Person in Scotland, hath, or shall within the Time by this Act limited, take and subscribe the Oath appointed to be taken by Ministers and Preachers in Scotland, by the 5 Geo. c. 29. instead of the Abjuration Oath, such Person shall be deemed to have complied with the Intent of this Act, as if he had taken the said Oath of Abjuration required by this Act, and shall not incur the Pains and Forfeitures inflicted by this Act, or be obliged to register his Name or real Estate. *Ib.*



Papists to take the *Formula*, or register.

1 Geo. c. 24.

Fees.

to Geo. c.

No Woman obliged to take the Oath, or register her Lands.

Or Reversioner.

Or Mortgagee.

Or Trustee,  
Or Farmer,

Or Persons not having 10 l. per Annum.

Or who had taken the Oaths before.

Time enlarged for taking the Oaths, &c.

And all Papists, or reputed Papists in *Scotland*, shall, at the Time of taking and subscribing the Oaths of Allegiance and Abjuration, and subscribing the Assurance herein before required, make and subscribe the Declaration called the *Formula*, as the same is recited in an Act of Parliament of *Scotland*, passed in the Year 1700, entitled, *An Act to prevent the Growth of Popery*; and on Neglect or Refusal to make and subscribe the said *Formula*, at the Times before directed, such Papist, or reputed Papist, shall be obliged to register his Name and real Estate as aforesaid, or for want thereof, be liable to, and incur the like Pains and Forfeitures as are hereby inflicted on Persons refusing or neglecting to take the said Oaths, or to register as aforesaid. *Ib.*

And for taking and subscribing the Oaths and Assurance appointed by this Act, three Pence shall be paid; and for a Certificate thereof, if required, one Shilling, and no more. *Ib.*

Nothing contained in the abovesaid Act of 9 Geo. c. 24. shall extend to oblige any Woman to take the Oaths or Assurance hereby required, or to register her Name or real Estate; nor shall oblige any Person to take or subscribe the same, or register as aforesaid, who had only an Estate or Interest in Lands, Tenements, or Hereditaments, in Reversion or Remainder, expectant upon any Estate Tail, or Estate for Life, or for Years determinable upon any Lives, where no Rent was reserved on such Estate for Lives or Years, or who had only an Estate or Interest in Lands, as Mortgagees, or by way of Security or Relief of any Engagement, or by way of Warranty, not being in the actual Possession thereof, or who were only seised in Trust, or who had only an Estate or Interest therein, as Tenants or Farmers, by Vertue of their Leases, whereupon two Thirds or more of the yearly Value were reserved, or who had not between the 27th of May, and the 25th of December 1723, Lands of the clear yearly Value of 10 l. or upwards, whereof they, or some in Trust for them, were in Possession or Receipt of the Rents or Profits, or who had taken the Oaths appointed by the first of Geo. c. 13. in *England*; or who had taken the Oaths in *Scotland*, in Pursuance of the above recited Acts for taking the Oaths, and subscribing the Assurance in *Scotland*.

And the Time for taking the said Oaths, both in *England* and *Scotland*, is enlarged to the 28th Day of November 1724. And all People are indemnified who shall take the said Oaths respectively, before that Time, or in Default

fault thereof, register their Names and Estates before the 24th of June 1725. Stat. 10 Geo. cap.

And every Registry shall express in what Parish, Town-Manner of Ship, Borough, or Place, the Lands or Hereditaments lie Registering, or arise, and who are the Possessors thereof; and what Estate or Interest the Person registering has therein, and the annual Value or yearly Rent reserved; and if the same be upon Lease, by whom such Lease was made, what Rent reserved, and what Fine paid for such Lease, and the Time when such Registry is made; and the said Registry shall be entered in a Parchment-Book or Roll, kept by the Clerk of the Peace of the County or Division where the Lands or Hereditaments respectively lie or arise in *England or Wales*; and if the same be in *Scotland*, by the Sheriff, or Sheriff depute of the County, or by the Keeper of the general Registry of Seisins at *Edinburgh*. *Ib.*

And every Person is required to take Care that his Name of the Name be subscribed to such Registry, at the Quarter-Session to be held, in the Presence of two or more Justices of the subscribed to Peace, if such Registry be in *England or Wales*; and if it the Roll, be made in *Scotland*, in open Court, before such Sheriff, or Sheriff depute, or Keeper of the general Registry at *Edinburgh*, either by himself, whose Estate is so registered, or by his Attorney, lawfully constituted by Letter of Attorney, under his Hand and Seal, and executed in the Presence of two Witnesses, one of whom shall make Proof of such Execution upon Oath; and the Justices at the Sessions, Sheriffs, and Keepers of the Registry at *Edinburgh*, are impowered to examine such Witnesses upon Oath; and two of the Justices, or the Sheriff, or Sheriff depute, or the Keeper of the Registry at *Edinburgh*, shall subscribe his or their Names to the Entries made before them, as Witnesses of the due making thereof, on Pain of 20 *l.* each. *Ib.*

And all Clerks of the Peace, Sheriffs, and Sheriffs depute, are required to keep Parchment-Books or Rolls, at some notorious Place in the County, &c. as also the Keeper of the Registry at *Edinburgh*, in his publick Office there; and they are required, by themselves, or their Deputies, to register the Christian and Surnames of all Persons who come to be registered, or who shall send any Writing, desiring such Officer to register their Names, and shall also register their Estates in such Words as the said Persons, by To be registered any Writing signed by them, shall desire, upon tender of the Fees hereby appointed to be paid for registering, so as the Parties deliver in Writing, the Words desired to be registered, ten Days before the Quarter-Sessions or She-

riff's Court: And the said Officers shall enter such Persons Names and Estates, before the next Quarter-Sessions, or Sheriff's Court; or if such Registry is to be made in the general Registry at *Edinburgh*, within ten Days after the Delivery of the said Particulars: And the several Clerks of the Peace and Sheriffs, shall carry the said Rolls to every Quarter-Sessions, or Sheriff's Court, until the Time of subscribing be expired, and Alphabetical Tables shall be kept, of the Surnames of all Persons registering, and of the Place where their Lands lie, together with such Letters of Attorney as aforesaid, which shall also be entered upon Record, and a Fee of 3 *d.* paid for every two Hundred Words contained in the Registry, and 4 *d.* for every Search, and no more; and such Tables and Rolls shall be inspected, and a Copy of the Registries made and Register to be subscribed by the respective Officers aforesaid, for every Person who shall desire the same, and tender their Fees, and such Persons suffered to examine the same with the Rolls, paying the Officer his Fee of 3 *d.* for every two Hundred Words; and such Officer, refusing to do as required by this Act, shall forfeit his Office, and 100 *l.* to the Party grieved, to be recovered in the Courts at *Westminster*, or in the Court of Exchequer in *Scotland* respectively. *Ib.*

One Registry And where any Mannors, Demesn, or other Lands or where the entire Farms, lie in more Counties than one, the Lands lie in string of the same in the County only where the Mannor- several Conn- House, or the House or Houses to the said Farm or Lands ties. do lie, taking Notice that the same do extend to such other County or Counties, shall be a sufficient registering of such Mannors, Farms and Lands within the Intent of the said recited Act. *Ib.*

Copies of Re- And the respective Clerks of the Peace in *England* and gisters to be *Wales*, are required to return Copies of the Registries made transmitted before them, into the Exchequer at *Westminster*, before the to the Exche- 29th of September 1725. And the said Officers of *Scot-* quer. *land* are required to make their Returns into the Exchequer in *Scotland*, within the same Time. *Ib.*

One Year's And if any Person hereby required to take the said Rent forfeited Oaths, &c. shall neglect to take the same, and shall not for Default of register his Lands in such Manner as is herein required, registering. he shall forfeit the full Value of one Year's Rents and Profits of all such Lands, &c. not registered, two Thirds to the Crown, and the other to such Person as shall sue for the same in the Courts at *Westminster*, or Court of Exchequer in *Scotland* respectively. *Ib.*

Provided,



# PAPISTS and POPISH RECUSANTS. 313

Provided, that if any Person shall on the 21st of Persons Non April 1724, be in Prison, or beyond Sea, or non Compos, Compos, be- or disabled by Sickness to take the said Oaths, and shall yond Sea, &c. continue under such Disability, until the 1st of Novem- ber 1724, such Person shall take the said Oaths within six Months after such Disability removed, or in Default thereof, shall within six Months after register their Lands, &c. as hereby required, and shall thereupon be in- demnified from all Pains and Forfeitures incurred by this Act. And no Person shall be obliged to take the said And old Per- Oaths, or register his Lands, &c. who shall upon the 21st sons exempted of April 1724, be Seventy Years of Age or upwards. *Ib.*

And no Action shall be brought for not taking the Actions for Oaths, or registering Lands, above six Months after the not registering, Offence committed: And so much of the said recited to be brought Act, as inflicts any Loss or Forfeiture of the Fee-Simple, within six or Inheritance, or of any Estate or Interest in any Lands Months. or Hereditaments, for Default of taking the said Oaths Clause of for- or registering, is hereby repealed. *Ib.* forfeiture of the

And all Quakers who have taken, or shall take the Inheritance Effect of the Abjuration Oath, and subscribe the Declara- repealed. tion of Fidelity, shall be deemed to have complied with Quakers to the last recited Act, or this present Act, and be discharged take the Es- from all Penalties for not taking the said Oaths, or regi- fect of the ftring their Estates. *Ib.* Oath only.

And all Protestants in Scotland, who have taken, or Preachers Oath shall take, within the Times hereby limited, the Oath in Scotland. appointed to be taken by Preachers in Scotland, by the 5th of King George, instead of the Abjuration Oath, shall also be deemed to have complied with this Act. *Ib.*

And all Papists, or reputed Papists in Scotland, shall on Papists in Scot- taking the Oaths hereby required, make and subscribe the land to take Declaration called the *Formula*, or they shall be liable to the *Formula* such Penalties and Forfeitures as are by this Act inflicted with the Oath. on such as neglect to take the said Oaths hereby appointed, or register their Lands. *Ib.*

And for taking and subscribing the Oaths, and Assurance, Fees. 3 *d.* only shall be paid, and 6 *d.* for a Certificate, if re- quired. *Ib.*

And upon any Trial for a Forfeiture, for not taking Certificate the said Oaths, &c. or making such Registry as aforesaid, shall be Evi- a Certificate thereof, under the Hands of the proper Offi- dence. cer, shall be allowed as Evidence of the Defendant's having taken the said Oaths, or subscribed such Decla- ration of Fidelity, or taken the Effect of the Abjuration Oath respectively, as aforesaid. *Ib.*

And

**Penalty of** And if any Officer shall knowingly give or sign a false signing a false Certificate of any Person's having taken the said Oaths, &c. Certificate, as aforesaid; or if any Person shall raze, alter, or counterfeit, or shall Personate any other Person, or procure or counterfeiterfeit, or shall Personate another in taking the said Oaths, &c. ing one, any Person to Personate another in taking the said Oaths, &c. or Personating every Officer so offending, being convicted thereof, on any Person. Indictment or Information, shall forfeit his Office, and 100 *l.* to be divided between the King, and him that will sue for the same in any of the Courts at *Westminster*, or Court of Exchequer in *Scotland* respectively: And every Person offending in any other of the Premises, shall incur the Pains and Forfeitures of Perjury; and in Case of a false Certificate, or of any Person's Personating another, as aforesaid, the Certificate and Records thereof shall be void. *Ib.*

**Persons having unnecessary registered, may withdraw the same.**

Provided, that if any Person has registered his Estate in Pursuance of the said recited Act, who is hereby exempted from registering the same, he shall be at Liberty to withdraw such Registry; and all Officers with whom such Registries are lodged or entered, are required to vacate and discharge the same at the Request of the Party who registered them. *Ib.*

**Jews.**

And when any Jew shall present himself to take the Oath of Abjuration, in Pursuance of this, or the above-recited Act, the Words *upon the true Faith of a Christian*, shall be dispensed with, and omitted out of the said Oath. *Ib.*

And whereas by an Act of 3 *Geo. c. 18.* to oblige Papists to register their Estates, &c. it was enacted, That no Lands, or any Interest therein, should be aliened by any Papist, by Deed or Will, except such Deed and Will were enrolled within six Months. Now to relieve such Protestant Lessees, and Persons who have neglected to enroll their Deeds and Wills in due Time, it is enacted, That every Deed and Will made since the 29th of *September 1717*, to pass away any Lands, &c. or any Interest therein, from any Papist, or reputed Papist, though not enrolled, shall be good in Law, provided the same Deeds and Wills shall be enrolled by the 29th of *September 1724*.

**Saving to Protestant Lessees** And that all Leases made by Papists, or Persons professing the Popish Religion, to any Protestant, of any Lands since of Papists, and the 29th of *September 1717*, or hereafter to be made, wherefor those who on the full yearly Value, or the ancient or most accustomed have not registered their yearly Rent or more, is reserved, shall be good, without any Inrollment. *Ib.*

**Conveyances in Time.**

Provided, that this Act shall not extend to make good any Deed, Will or Lease not enrolled, whereof Advantage shall have been taken by Suit or Entry, before the 6th of *March 1723*. *Ib.*

READINGS.

R E A D I N G S.

At the Reformation, probably those were deem'd <sup>Recusant de-</sup> <sup>scribed.</sup> Recusants who disputed the Authority of the Crown in Causes Ecclesiastical, and deny'd the Prince's Supremacy; but the Acts of Parliament made against Recusants, particularly the 35 of *Eliz. cap. 2.* describe a Recusant to be *one who does not repair to some Church or Chapel, or usual Place of Common-Prayer, to hear Divine Service.* This, I presume, was look'd upon as an Evidence of his rejecting the Queen's Supremacy. — Afterwards the receiving the Sacrament was made a farther Test of Conformity; And by the 25 *Car. 2. cap. 2.* and 30 *Car. 2. cap. 1.* a Declaration against Transubstantiation was requir'd of all People admitted to Offices or Preferments, or into either House of Parliament, to distinguish Papists from Protestants. At this Day, all Persons are deemed Popish Recusants Convict, who refuse the Oaths of Allegiance or Abjuration, and are liable to suffer and forfeit accordingly; that is (not to mention lesser Pains) they incur a Præmunire, whereupon they forfeit <sup>Pains they are</sup> all their Goods and Chattels, with their Lands, <sup>liable to.</sup> and are liable to perpetual Imprisonment.

The Act of 1 *Eliz. cap. 1.* Sir Edward Coke de- <sup>The Pope</sup> <sup>usurped a Su-</sup> <sup>premacy,</sup> <sup>which was</sup> <sup>originally in</sup> <sup>the Crown.</sup> nominates, An Act of Restitution of the ancient Jurisdiction Ecclesiastical, which always belong'd of Right to the Crown of *England*, and holds, That this Statute is not introductory of a new Law, but declaratory of the old, and annexes not any Jurisdiction to the Crown, but that which was, or of Right ought to be by the ancient Laws of this Realm, Parcel of the King's Jurisdiction; by which Laws, the King, as Supreme Head, had full and entire Power, in all Causes, Ecclesiastical as well as Temporal; for the Ecclesiastical Laws are the King's Laws, as well as the Temporal; and the Judges of either of those Laws, derive their Authority from him alone, *Co. 5. 8, 9. Cawdrie's Case*, where are several Instances of Ecclesiastical Jurisdiction



Jurisdiction exercis'd by the Kings of this Realm in several Ages, *Moor* 755, 1043.

The King a  
mixed Person,  
according to  
Sir Edward  
Coke.

And in this Respect the King is said to be *Perſo-  
na mixta*, and *Perſona mixta & unita cum Sacerdo-  
tibus*, for that he hath both Ecclesiastical and Tem-  
poral Jurisdiction, 10 *H.* 7. 18. *Co.* 2. 44. Bishop of  
*Wincheſter's* Caſe, *Coke* 13. 17. Caſe of *Modus De-  
cimand.* *Vid.* *Co. Lib.* 6. *Pref.*

The King is the Supreme Ordinary, and by the  
ancient Laws of this Realm, might, without any  
Act of Parliament, make Ordinances and Institu-  
tions for the Government of the Clergy, and de-  
prive them if they obey'd not, *Moor* 755. 1043.  
*Gro. Trin.* 2 *Jac.* 37. And if there be a Contro-  
verſy between Spiritual Perſons concerning their  
Jurisdiction, the King is Arbitrator, and 'tis a  
Right of his Crown to diſtribute to them, and to  
declare their Bounds, *Hobart* 17. Dr. *James's*  
Caſe.

And yet, altho' theſe Jurifdictions Eccleſiaſtical  
and Temporal are both in the King, they are not  
to be confounded; for altho' both Laws are the  
King's Laws, yet they are to be adminiſtered di-  
ſtinctly, ſo that he who hath Eccleſiaſtical Jurifdiction  
derived from the King, ought not to uſurp upon  
the Temporal Law; and the Eccleſiaſtical Judge  
who meddles in Temporal Cauſes or Suits, and  
draws the Intereſt or Cauſes of the Subject, which  
ought to be determined by the Common Law, *ad  
aliud examen*, viz. to be decided by the Eccleſiaſti-  
cal Law, offends *contra Coronam & Dignitatem Re-  
giam*, in confounding thoſe Jurifdictions of the  
King, which ought to be kept ſeparate and diſtinct.

And in ſuch Caſes, not only a Prohibition lies,  
but the Eccleſiaſtical Judge, if the Cauſe original-  
ly belongs to the Common Law, and not to the  
Eccleſiaſtical Court, incurs a Premunire for de-  
priving the Subject of the Benefit of the Common  
Law, which is his Birth-right, *Co.* 12. 37, 38, 39,  
40. *Coke's 3. Inſt.* 120.

High-Com-  
miſſion Court  
abolished.

And Sir *Edward Coke* held, That the Authority  
given by this Act of 1 *Eliz.* empowering her Ma-  
jeſty to conſtitute a High-Commiſſion Court, was

no more than she had before by ancient Prerogative, and the Laws of *England*, but this Court is taken away by a subsequent Act of Parliament. (viz.) 17 Car. 1. cap. 11.

If a Man absolve or reconcile, or is absolved or reconciled to the Pope or See of *Rome*, without any Bull, Writing, or Instrument to that purpose. *Rome.*

This Case seems not to be within the Meaning of this Statute, for there must be some Bull, Writing, or Instrument to authorize such Absolutions or Reconciliation, or the Person who gives or receives it, is not punishable by this Act, altho' he may be by 23 Eliz. cap. 1. and 3 Jac. c. 4.

But all Persons who conceal this Offence, are not Concealers within the Danger of this Law, for if one be present at such Offer, Motion, or Perswasion, and conceal it, he shall not incur the Pains of Misprision of Treason, unless he be the Party to whom such Bull or Absolution, &c. was offer'd. *Cawley* 51.

And if one brings into this Realm an *Agnus Dei*, &c. or other Superstitious Utensil, and another Person offers or delivers it, neither one nor the other it seems, is within the Danger of the Statute of 13 Eliz. cap. 2. for by the express Words of that Act, it must be the same Person that brings it in, who offers or delivers it, to make him liable to the Pains thereby inflicted; and to make it an Offence, it must be offer'd or deliver'd to a Subject of this Realm, and not a Foreigner.

But by the Words of the Statute of 13 Eliz. cap. 2. to make a Receiver of such Superstitious Utensil an Offender, there must be a Concurrence of Intentions both in the Giver and Receiver; for if a Person imports such Superstitious Things, but not with an Intent that they should be worn or used, and gives them to his Friend, who receives them with an Intent to wear or use them, this is penal to neither, not to the Giver, because he had no Superstitious Intent, nor to the Receiver, because the offering or delivering them to be worn, is expressly made a Condition precedent in the Statute to the Obliquity of the Fact in receiving them, and

and only when the Person delivering them, delivers them to be worn or us'd, the Person receiving them to that Intent can incur a *Premunire*.

But without this Concurrence of Intentions in the Giver and Receiver, the Giver may be an Offender within this Statute; for if one brings into this Realm such Superstitious Utensils, and delivers them to be worn or used, tho' his Friend doth not receive them with an Intent to use or wear them, but burns or defaces them, yet the Giver incurs a *Premunire*; for the Words relating to the Offerer are entire in themselves, and have no Dependence on the subsequent Words relating to the Receiver, but makes all Persons offenders who bring them in, and offer or deliver them to a Superstitious Intent, without any respect to the Intent of the Party who received them, or to whom they are offer'd.

If the Person to whom such *Agnus Dei*, &c. is offer'd, do bring the Offender to any Justice of Peace of the County where the Offer is made, altho' he be not the next Justice, yet it is good enough, and satisfies the Intent of the Act; for the Word *next* is put in such Cases into Acts of Parliament but for Conveniency, and the more speedy Execution of Justice. *Vid. Styles 246. Maine and Serjeant's Case.*

If the Offence of bringing in such *Agnus Dei*, &c. be declar'd to a Justice of Peace of a Foreign County, he does not incur a *Premunire* by not discovering it to a Privy-Counsellor; and where the Declaration is made to a Justice of Peace of the proper County, it shall be sufficient to indemnify him, to discover it to any one of the Privy-Council.

Forfeiture of  
20 l. a Month.

If a Person comes to Church on any *Sunday* or *Holy-Day* within the Month, he is exempted from the Penalty of 20 l. inflicted by the 23 *Eliz. cap. 1.* for his Absence, but not from the 12 d. Forfeited by the 1 *Eliz.* for the Days Absence, if he comes not every *Sunday* and *Holiday*. *Cawley 63.*

A Recu-



A Recusant certify'd into the Court of *King's-Bench*, according to the 23 *Eliz.* shall give Security there for his good Behaviour; for where any Proceedings are appointed to be, upon or after a Certificate sent to any Court there by common Intendment, the Proceedings are to be in that Court to which the Certificate is sent, if no other Court be named; and in this Case Popish Recusants Convict, will not be deem'd sufficient Sureties, and were refus'd by the Court of *King's-Bench*, in the Case of *Griffith* and other Recusants, who were brought thither to be bound for their good Behaviour. 2 *Bulstrode* 155.

The Clause for Distribution of the Forfeitures incur'd by this Act, extends not only to the Forfeitures of Two Hundred, and One Hundred Marks, for saying or hearing Mass, and the ten Pounds a Month for keeping a Schoolmaster contrary to this Act, but likewise to the twenty Pounds per Month for not repairing to the Church. In which last Case the Informer *Qui tam, &c.* shall have the third Part, as well as in the other Cases; for altho' by the foregoing Clause the whole twenty Pounds per Month is given to the Queen (which the other Forfeitures are not in express Words) yet that will not alter the Case, nor make void the express Appointment made here, in what Manner, and to whom all the Forfeitures limited by this Act shall be disposed of; and 'tis usual, in Acts of Parliament, to give the whole Penalty for any Criminal Matter, to the King, and afterwards in the same Act, to make Distribution thereof, and to give Part to him that will sue, as in the Statutes of 3 *H. 6. cap. 3.* and 3 *H. 7. cap. 7.* and others.

A Natural-born Subject, or a Denizen, being Defendant in any Suit upon a Penal Law in the *King's-Bench*, *Common-Pleas*, or *Exchequer*, is not compellable to put in Special Bail, but may appear by Attorney. *Yelv. 53. St. George's Case.*

If two Informers, in one and the same Day, exhibit Informations against the same Person, for the same Offence, they are both void, and may be pleaded the one in bar of the other, for that there is

is no Priority to attach the Right of Action in one of the Informers more than in the other. *Hobart* 128. *Pye and Coke*.

Informers barred from prosecuting, where the King sues.

But if the Recusant be once convicted at the King's Suit, either by Indictment upon this Statute, or according to the Statute of 29 *Eliz. cap. 6.* or 3 *Jac. cap. 4.* upon Proclamation, the Informer, *Qui tam, &c.* cannot afterwards charge him, but is barr'd for ever after; for the Intention of this Statute is, that the Informer may exhibit Informations against such only as are concealed, or not charged at the King's Suit; and that in such Cases only where the King does not prosecute, pardon, or release, before the Informer's Action is commenced. *Co. 11. 65. Dr. Foster's Case. Bridgman* 121, 122. *Parker* against Sir *John Webb* and his Wife. *Lane* 60.

The Condemnation, or the Acquittal of the Party, at the Suit of the Informer, is a good Bar against the King, and all others, *11 Co. 66.* But if pending the popular Action or Information, the Plaintiff or Informer, *Qui tam*, be nonsuited, or release, or enter a *Nolle prosequi*, or die, none of these shall Bar the King, but the Attorney-General may proceed upon the Information for the King's Part. *1 Leon. 119. Stretton and Taylor's Case. 3. Inst. 194.*

Informers to pay Costs.

By the Statute of 18 *Eliz. c. 5.* If an Informer or Plaintiff upon a penal Statute, where any Forfeiture is generally limited to him that will sue, shall delay or discontinue his Suit, or be Non-suit, or shall have the Trial or Matter pass against him by Verdict, or Judgment of Law, he shall pay to the Defendant his Costs, Charges, and Damages. *Hutton* 36. *Pye's Case.*

Felony to harbour a Priest, &c.

In the Construction of the Statute of 27 *Eliz. c. 2.* It is held, That the receiving, relieving, or maintaining of a Jesuit, Popish Priest, or other Popish Ecclesiastical Person at Liberty, and known by the Party to be such, is Felony at this Day, and the Offender shall lose the Benefit of his Clergy; and so the Law hath been taken upon Actions of the Case, for saying the Plaintiff kept a Seminary, Priest, or Jesuit in his House, knowing him to be such.

such. *Cre. Pasch.* 10 *Jac.* 300. *Smith versus Flint.*  
*Palmer* 410. *Clerk and Loggin's Case.*

In the Construction of the Statute of 35 *Eliz.* No Forfeiture  
*c. 2.* it is held, That if a Popish Recusant repairs by a Recu-  
to the Place appointed him by that Act, and keeps sant's neglect-  
within the Compass of five Miles, he doth not forfeit ing to give  
his Goods or Lands, tho' he do not present in his Name,  
himself, or deliver his Name to the Curate, &c. as &c.  
the Act requires, for there is no particular Penalty  
inflicted in this Part of the Act for that Omission,  
nor yet in the subsequent Branch, for him that hath  
clearly twenty Marks *per Annum* in Freehold, or  
Goods and Chattels, worth forty Pounds. But yet  
such Person may be indicted for such Neglect, and  
fined upon the general Words of the Statute  
which commands the Thing to be done; for where  
an Act of Parliament commands any Thing to be  
done, and inflicts no Penalty, an Indictment lies  
against the Person who ought to do it, for his Neg-  
lect or Omission. *Co. 2. Inst.* 55. 163. *Vid. Cro.*  
*Hill.* 41. *Eliz.* 655. *Cronther's Case.*

If a Popish Recusant, restrained from Travel- What Process  
ing by 35 *Eliz.* be summoned by Warrant from a will excuse a  
Justice of Peace to appear before him, the Recusant Recusant's  
ought not to travel to such Justice out of his Com- Travelling.  
pass of five Miles; for altho' a Justice of Peace's  
Warrant be the King's Process, yet it is not in-  
tended in this Act, but the Word *Process* is re-  
strained to such Process as requires the Recusant's  
Appearance in some of the King's Courts; how-  
ever, if the Warrant be to arrest the Recusant,  
and by Force thereof he is carried by the Constable  
out of the Compass of five Miles, he is excusable,  
and shall forfeit nothing, this being done by Com-  
pulsion; but if there be any Covin between the  
Recusant and the Justice of Peace or Officer, this  
may alter the Case.

If a Popish Recusant, restrained by 35 *Eliz.* be  
cited into an Ecclesiastical Court, he may by force  
of this Proviso, travel out of the Compass of five  
Miles, to appear there. No Popish  
Tradesmen  
may remain  
within ten  
Miles of Lon-

The Proviso in the 3 *Jac. c. 5.* That such Per-  
sons as then used any Trade within ten Miles of  
VOL. IV. Y London, don.



# PAPISTS and POPISH RECUSANTS.

*London*, might remain at their Dwellings within ten Miles of this City, is not in Force at this Day, according to Mr. *Cawley*. But now all Popish Recusants, convicted or indicted of Recusancy, or not repairing to Church, but forbearing by the Space of three Months, are by this Act to depart *London*, and ten Miles Compass of the same, notwithstanding they are Tradesmen, or have no other Place of Dwelling. *Cawley* 204.

Licence to  
Travel, how  
to be made.

As to the Licensing a Recusant to Travel, the Bishop, Lieutenant, or Deputy-Lieutenant, who gives his Assent to it, must be a distinct Person from the Justices of Peace who gave the Licence; and therefore, if one and the same Person be a Justice of Peace and Deputy-Lieutenant, he cannot act herein in both Capacities; and if he sign and seal the Licence as a Justice of Peace, the Assent of some other Deputy-Lieutenant, or of the Bishop or Lieutenant, must be had thereto, or the Licence is void. *Cro. Mich.* 12. *Jac.* 352. *Maxfield's Case*.

And it is held by Mr. *Cawley*, That if a Bishop's Diocese extends into divers Counties, and he resides in one of them, his Assent can be good only for the Popish Recusants of that County where he resides, and not for those of any other Part of his Diocese: So if a Lieutenant dwells out of the County whereof he is a Lieutenant, his Assent to such Licence is void. *Cawley* 209.

And it was held to be a good Exception to a Licence by four Justices, that it was said to be granted for certain urgent Occasions, no particular Causes of the Recusant's Travelling being expressed in it. *Cawley* 210.

See *Titles, Dissenters, Militia, Oaths and Parliament*.

Pardon.

## Pardon.

**C**harters of Pardon shall not be granted; but only 2 Ed. 3. c. 2.<sup>1</sup> where the King may do it, by his Oath; that is King's Power to say, where a Man slayeth another in his own Defence, of pardoning or by Misfortune. Stat. 2 Ed. 3. c. 2. limited.

It is accorded and established, That no Charters of Par- 10 Ed. 3. c. 2.  
don shall be granted contrary to the abovesaid Statute of  
2 Ed. 3. Stat. 10 Ed. 3. c. 2.

In Case any Charter of Pardon should be granted, the 10 Ed. 3. c. 3.  
Party shall come before the Sheriffs and Coroners where One pardoned  
the Felonies are done, and bring six sufficient Mainper- 10 find six Su-  
ners for his good Abearing; and the said Mainprizes shall rities.  
be sealed and returned into Chancery; and if the Party,  
after such Mainprize found, shall bear him otherwise  
against the Peace than he ought, his Pardon shall be  
void. Stat. 10 Ed. 3. c. 3.

No Charter of Pardon of the Death of a Man, or 14 Ed. 3. c. 15.  
other Felony, shall be granted, but where the King may  
do the same, saving his Oath, as is contained in former  
Statutes. Stat. 14. Ed. 3. c. 15.

In every Charter of Pardon of Felony, the Suggestion, 25 Ed. 3. c. 2.  
and the Name of him that maketh the Suggestion, shall Untrue Sug-  
be comprised in it; and if the Suggestion be found un- gestion avoids  
true, the Pardon shall be disallowed. Stat. 25 Ed. 3. c. 2. the Pardon:

No Charter of Pardon shall be allowed for Murder, 13 Rich. 2. c. 1.  
Death of a Man slain by Await, Assault, or Malice pre- 16 Rich. 2. c. 6.  
pence, Treason, or Rape, if it be not specified in the Treason, Mur-  
fame Charter. And if it be not specified in a Pardon for der, &c. can-  
the Death of a Man, that he was murdered or slain by not be par-  
Await, the Justices shall enquire thereof; and if it be done by ge-  
found he was murdered or slain by Await, Assault, or neral Words.  
Malice pre- pence, the Charter shall be disallowed. Stat. 13 5 H. 4. c. 2:  
Rich. 2. c. 1. 16 Rich. 2. c. 6. Procurers of

If any one shall pray, or procure a Pardon for an Ap- Pardon for  
prayer, the Name of him that procured it shall be insert- Appravers.  
ed in the Pardon, and if afterwards the Appraver become 12 Car. 2. c. 11.  
a Felon again, the Person who procured a Pardon shall Act of In-  
forfeit 100 l. Stat. 5 H. 4. c. 2. demnity at

An Act of Indemnity and General Pardon, was grant- the Restora-  
ed to all Persons concerned in the grand Rébellion, except tion.  
the Regicides, Sir Harry Vane, and General John Lambert. 4 & 5. W. &

If any Person out of Prison shall commit a Robbery, M. c. 8.  
and afterwards discover two or more who shall commit Robber disco-  
any Robbery, so as they may be convicted, such Disco- vering his  
verer is hereby entitled to the King's Pardon for all Rob- Accomplices,  
beries pardoned.

beries which he shall have committed before such Discovery; which Pardon shall also be a good Bar to any Appeal for such Robberies. *Stat. 4 & 5 W. & M. c. 8.*

**5 & 6 W. & M. c. 13.**

The Act for finding six Sureties on a Pardon, repealed.

Two Sureties to be found.

The abovesaid Act of 10 Ed. 3. c. 2. for finding six Mainperners, or substantial Persons to be bound for the good Behaviour of a Person who is pardoned for Felony, is hereby repealed: And it is enacted, That if a Pardon be pleaded for Felony, the Court may at their Discretion remand or commit the Person pleading it, to Prison, there to remain until he enters into a Recognizance with two sufficient Sureties for his good Behaviour, for any Time not exceeding Seven Years. *Stat. 5 & 6. W. & M. c. 13.*

Provided, that if such Pardon be pleaded by a Feme Covert, or Infant, such Feme Covert or Infant, may find two Sureties to enter into a Recognizance for them. *Id.*

**6 & 7. W. 3. c. 17.**

Coiner discovering his Accomplices, pardoned.

If any Person out of Prison, shall be guilty of Clipping, Coining, Counterfeiting, Washing, Filing, or Diminishing the Coin, and discover two or more who shall commit the said Crime, such Discoverer is hereby entitled to a Pardon for all such his Crimes which he shall have committed before such Discovery. *Stat. 6 & 7 W. 3. c. 17.*

**10 & 11 W. 3. c. 23.**

House-breakers and Horse-stealers discovering, pardoned.

If any Person shall commit any Burglary, House-breaking or Felony, in stealing Horses, Money, Wares or Goods, from whom the Benefit of the Clergy is by this Act taken away, and being out of Prison shall discover two or more Persons who shall have committed any such Burglary, Horse-Stealing, or Felony, and shall be convicted thereof, such Offender shall have, and is hereby entitled to the King's Pardon, for the Burglaries, House-breakings, Horse-Stealings, or Felonies as aforesaid, which he shall have committed before such Discovery, which shall likewise be a good Bar to any Appeal for the same. *Stat. 10 & 11. W. 3. c. 23.*

**12 & 13 W. 3. c. 2.**

Impeachment 5 Ann. c. 31. House-breakers in the Day-time.

No Pardon shall be pleadable to any Impeachment by the Commons in Parliament. *Stat. 12 & 13 W. 3. c. 2.*

If any Person out of Prison, who shall be guilty of Burglary, or the Felonies of breaking and entering any House in the Day-time, shall discover two or more who have committed any such Offences, he shall be entitled to a Pardon for all Burglaries, Robberies and Felonies committed before such Discovery, and to the Reward of 40*l.* given by this Act. *Stat. 5 Ann. c. 31.*

**2 Geo. c. 19.**

4 Geo. c. 11. Pardon on Condition of Transportation.

The last Act of General Pardon was granted 3 Geo. c. 19. Where an Offender shall be convicted of any Crime excluded the Clergy, and the King shall extend Mercy to him on Condition of Transportation, and signify the same by one of the principal Secretaries of State, the

Court



Court may order such Offender to be sent to the Plantations for seven Years, and convey and make over such Offender to the use of any Person and his Assigns, for seven Years, who shall contract for the Performance of such Transportation. *Stat. 4. Geo. c. 11.*

## READINGS.

A Pardon, *Per donatio*, according to Sir *Edward Coke*, is a Work of Mercy, whereby the King, either before Attainder, Sentence, or Conviction, or after, forgiveth any Crime, Offence, Punishment, Execution, Right, Title, Debt, or Duty Temporal or Ecclesiastical: all that is forfeited to the King by any Attainder, &c. he may restore by his Charter; but if by the Attainder the Blood be corrupted, that must be restored by Authority of Parliament. *3 Inst. 233.*

Pardon defined.

Blood not restored by a Pardon.

General Pardons are by Act of Parliament, and must be taken notice of when they are general, tho' the Party do not plead them; but in these Days, Sir *Edward Coke*, general Pardons have so many Qualifications and Exceptions of Offences and Things, and of Persons also, that the Court cannot take any Notice of them, neither can the Party take any Benefit or Advantage thereof, unless he plead it.

Where a Pardon must be pleaded.

The most beneficial general Pardons that have been granted, are those of the fifth and thirteenth Years of the Reign of Queen *Elizabeth*, and the best general Pardon in the Time of King *James I.* was in the twenty first Year of his Reign.

The most beneficial particular Pardons that have been granted, Sir *Edward Coke* observes, were those to *William of Wickam*, Bishop of *Winchester*, and Cardinal *Thomas Woolsey*. *3 Inst. 235.*

And he observes further, That he never saw Murder never any Pardon of Murder by any King of *England*, pardoned in exprefs Terms. *Ib.*

Before the Statute of 13 *Ric. 2.* by the Pardon of all Felonies, Treason and Murder were pardoned; but at this Time, by the Pardon of all Felonies, the Death of a Man is not pardoned.

It has been held, Sir *Edward Coke* observes, That the King may dispense with the abovesaid Statutes, by a *Non obstante*, but he had not found any such Clauses of *non obstante* to dispense with the said Statutes, till of late.

King cannot  
dispense with  
a Statute by  
*non Obstante*.

And by the Statute of 1 *W. & M. cap. 2.* declaring the Rights and Liberties of the Subject, it is enacted, That no Dispensation by *non obstante*, with any Statute, or part thereof, shall be allowed, but the same shall be void.

Nor pardon in  
an Appeal of  
Death,

In an Appeal of Death, Robbery, Rape, &c. the King cannot pardon the Defendant, for the Appeal is the Suit of the Party to have Revenge by Death, and whether the Defendant be attainted by Judgment, &c. or by Outlawry, the Pardon of the King shall not discharge the Defendant. 3. *Inst.* 237.

Only the Bur-  
ning in the  
Hand.

The Defendant in an Appeal of Murder, upon not guilty pleaded, was found guilty of Manslaughter, and it was resolved by the Justices, upon Conference between them, That the Queen might pardon the Burning of the Hand, for that is no Part of the Judgment, at the Suit of the Party Plaintiff in the Appeal, but it is a collateral and exemplary Punishment inflicted by the Statute of 4 *H. 7. c. 13.* *Ib.*

Common Nu-  
sances cannot  
be pardoned.

Common Nuisances, as for not repairing Bridges, Highways, &c. The King cannot pardon, or discharge either the Nuisance or the Suit for the same. *Non poterit Rex gratiam facere cum Injuria & damno aliorum.* *Ib.*

Recogni-  
zances of the  
Peace.

If one be bound in a Recognizance, &c. to the King, to keep the Peace against another by Name, and generally all other Leiges of the King: In this Case, before the Peace be broken, the King cannot pardon or release the Recognizance, altho' it be made only to him, because it is for the Benefit and Safety of his Subjects. 3. *Inst.* 238.

Actions qui  
tam.

After an Action Popular, brought *tam pro Domino Rege, quam pro Scipso*, according to any Statute, the King cannot discharge but his own Part; and cannot discharge the Informer's Part, because by the bringing of the Action he hath an Interest therein; but before Action brought, the King may discharge

discharge the whole (unless it be provided to the contrary by the Act) because the Informer cannot bring an Action or Information originally for his Part only, but must pursue the Statute; and if the Action be given to the Party grieved, the King cannot discharge the same. *3 Inst. 238.*

A Man commits Felony, and is attainted thereof, <sup>Person attainted,</sup> is abjur'd for the same, the King pardoneth him the Felony without any mention of the Attainder or Abjuration, the Pardon is void. *Ib.*

The King pardoneth to *A* a Felony whereof he standeth indicted, or indicted and attainted, &c. <sup>False Suggestion.</sup> and in truth he is not indicted, nor attainted, &c. this is *expressio falsi*, and maketh the Pardon void. *A* is Outlaw'd, and the King pardons him the Outlawry, and all his Goods, it is void for the Goods, for he must have a Grant of them. *Ib.*

If a Man be indicted of Felony, and the King reciteth the same, and pardoneth the Felony contained in the Indictment, and all Outlawries thereupon, if any be, this is a good Pardon of the Outlawry, though it be doubtfully alledg'd, and the King not certainly inform'd. *Ib.*

The King may pardon one convict of Heresy, or Ecclesiastical of any other Offence punishable by the Ecclesiastical Law, in all Proceedings in the Ecclesiastical Court, *ex Officio*, the King may pardon the Offence. The King may also pardon Piracy upon the Sea. *Ib.*

A General Pardon of Felony, extends not to Piracy. Piracy. *3 Inst. 112, 113.*

It hath been adjudg'd, That a general Act of Pardon of all Felonies, &c. except Murder, shall extend to a *Felo de se*. *1 Lev. 8.*

Also it hath been adjudg'd, That if a General Homicide. Act of Pardon extend to all Felonies, Offences, Injuries, Misdemeanors, and other Things done before such a Day, it pardons a Homicide from a Wound given before the Day, whereof the Party dy'd not till after the Day, because the Stroke, which is the Cause of the Death, being pardoned, all the Effects of it are consequently pardoned.



Accessory.

Notwithstanding all Felonies are several, and consequently a Pardon of one Man cannot be a direct Discharge of another; yet in some Cases, the Felony of one Man may be so far dependant upon that of another, as to enure to his Benefit; as where the Principal pleaded his Pardon, and was allowed it at Common Law before his Attainder, and where he pleads, and is allowed it at this Day before his Conviction, the Accessary may take the Benefit of it, because he cannot be arraigned till after the Principal is convicted, 2 *Hawkins* 387.

Surety.

And it is agreed, That if a Man be bound to the King, as Surety for another, for the Payment of a Fine, or other Debt due to the Crown, the Pardon of the Principal is a Discharge of the Surety. *Ib.*

Pardon must be particular.

It is held, That a Pardon of *A, B, and C.* of all Felonies by them done, without adding *or any of them*, is void. *Ib.* 388.

*Rawleigh.*

In Sir *Walter Rawleigh's* Case it was held, That the King's Grant of a Military Command to a Person attainted of High-Treason, and in his Commission call'd his true and loyal Subject, and judicial Power given him over the Lives of others, did not amount to a Pardon of High-Treason, because every Pardon of High-Treason requires an express mention of it; and if the Offence had been but Felony, it could not have been pardoned after the Attainder, without express mention made both of the Felony and the Attainder. *Ib.*

Offences not Capital, pardoned.

A Pardon of all Misprisions, Trespasses, Offences and Contempts, will pardon any Crime which is not Capital, even a Premunire. *Ib.*

Ecclesiastical Court.

A Pardon will not discharge a Suit in the Spiritual Court, any more than in the Temporal, for Matter of Interest or Property in the Plaintiff, as for Tythes, Legacies, Matrimonial Contracts, and the like: And it is agreed, That after Costs are taxed in a Suit in such a Court, at the Prosecution of the Party, whether for a Matter of private Interest, or *pro Reformatione Morum*, or *pro salute Anime*, or for Defamation, &c. they shall not be discharged by a subsequent Pardon. *Ib.* 394.

The

The King may extend his Mercy upon what **Conditional** Terms he pleases, and annex such Conditions to **Pardons**, his Pardon as he thinks fits, on the Performance whereof the Validity of the Pardon will depend.

1 *Inst.* 274.

The Pardon of a Treason or Felony, even after a **A Person par-** Conviction or Attainder, does so far clear the Party **doned, is re-** from the Infamy, and all other Consequences of **stored to his** his Crime, that he may not only have an Action **Credit.** for a Scandal in calling him Traitor or Felon after the Time of the Pardon, but may also be a good Witness, notwithstanding the Attainder or Conviction, because the Pardon makes him, as it were, a new Man, and gives him a new Capacity and Credit. 2 *Hawk.* 395.

But it seems to be the better Opinion, That the **Except in Per-** Pardon of a Conviction of Perjury, does not so re- **jury.** store the Party to his Credit, as to make him a good Witness.

No Pardon by the King, without exprefs Words **But does not** of Restitution, shall divest either the King or a **give Restitu-** Subject of an Interest in Lands or Goods vested in **tion of Goods** them by an Attainder or Conviction precedent, but **forfeited,** a Pardon, prior to a Conviction, shall prevent any For- **Except prior** feiture either of Lands or Goods. 2 *Hawkins* 396. **to the Convi-** ction.

It hath been adjudged, That a Clause of Re- **Debts due to** lease of all Judgments and Executions in a Ge- **the Crown re-** neral Pardon, extends as well to Debts due to the **leased.** King by Assignment or Forfeiture, as to those originally due to him; and that it doth not restore them to the Person who assigned or forfeited them, but extinguishes them in the Hands of the Debtor. *Ib.*

It seems agreed, That notwithstanding the King's **Pardon does** Pardon to a Simonist, coming into Church contra- **not restore a** ry to the Purport of 31 *Ed.* 6. or to an Officer com- **Simonist, or** ing into his Office by a corrupt Bargain, contrary **corrupt Of-** to the Purport of 5 & 6 *Ed.* 6. c. 16. may save **ficer.** such Clerk or Officer from any Criminal Prosecution in respect of the corrupt Bargain, yet shall it not enable the Clerk to hold the Church, nor the Officer to retain the Office, because they are absolutely disabled by Statute. *Ib.*

A General

A General Pardon by Parliament cannot be waved, but a Man may wave the Benefit of a Pardon under the Great Seal, as where he does not plead it, but take the General Issue, after which he shall not resort to the Pardon.

Pardon plead-  
ed.

A Pardon under the Great Seal cannot be allowed, unless it be pleaded, and it will be Error to allow a Man the Benefit of it.

He who pleads such a Pardon, ought to produce it *sub pede Sigilli*; yet if he pleads it without producing it, the Court may in their Discretion, indulge him a further Day to produce it.

Variance be-  
tween the Re-  
cord and Par-  
don.

If there be a Variance between the Record on which a Man is convicted or attainted, and his Charter of Pardon, yet if there be no Repugnancy to intend that the same Person or Thing are meant in both, it may be supplied by proper Averments; and therefore, if one be indicted by the Name of *J. S. Yeoman*, and pardoned by the Name of *J. S. Gentleman*, or indicted by the Name of *P. the Tasker*, and pardoned by the Name of *B. the Son of W.* he may make good the Variance, by averring, that he is the same Person intended in such Indictment and Pardon: Or if in an Indictment of the Death of *J. S.* the Stroke be supposed to have been given on the first of *August*, and in the Pardon on the third, the Party may aver, that the Death of one and the same *J. S.* are intended in both: And if such a variant Pardon be pleaded without any such Averment, it seems that the Court may in Discretion give the Party a farther Day, either to perfect his Plea, or to purchase a better Pardon: And there are some Instances in the old Books, where upon such Variance, the Court took an Enquiry of Office, whether the same Person were meant in both Records. *2 Hawk. 398.*

Burning in  
the Hand has  
the Effect of  
Pardon.

A Conviction of Felony, and Burning in the Hand, has in some Cases the Effect of a Pardon, for by this the Party is cleared of his Offence, and becomes a lawful Witness.



The King may restore a Person attainted to his Lands, because no Person is prejudiced by it; but Re-stitution of Blood cannot be made by him, because it would be a Prejudice to others; yet the King's Pardon restores the Blood as to all Issue begotten afterwards.

King cannot restore to Blood, only as to the subsequent Issue.

A Conviction of Barrettry renders a Man infamous, and incapable of being a Witness, but a General Pardon will restore him. *Et per Holt, Ch. Just.* The Difference between the Effects of the King's Special Pardon, and a General Pardon, is this, Where-ever the Disability is part of the Judgment by Act of Parliament, as in a Conviction of Perjury upon the Statute, there the King's Pardon cannot remove that Disability, but a General Pardon may; but where the Disability is only consequential, as upon an Attainder, and no Part of the Judgment, there the King's Pardon will take it away. *The King ver. Weedon, & al. Mich. 12. W. 3. 3 Salkeld 264.*

Difference between the King's Pardon, and a General Pardon.

Where a Statute Pardon contains Exceptions in the Body of the Act, he who pleads such Statute to entitle himself to the Benefit thereof, must aver himself not to be a Person excepted; but where the Exceptions follow in a distant Clause, by Way of Proviso, he needs not. *3 Salk. 266.*

Where a Person must shew he is not excepted.

## Parliament.

**A**LL Persons and Commonalties which shall receive 5 Ric. 2. c. 4 Summons to Parliament, shall come to Parliament in such Manner as they were bound and accustomed to do of old, on Pain of being amerced, or otherways punished, as of old Times has been used. *Stat. 5. Ric. 2. cap. 4.*

Pain of not coming to Parliament when Summoned.

If any Assault or Affray be made upon any Lord, Knight, Citizen, or Burghess coming to the Parliament, or other Council, or attending there, the Party who made such Affay or Assault, shall pay double Damages to the Party grieved, and make Fine and Ransome at the King's Will. *Stat. 11 H. 6. c. 11.*

5 H. 4. c. 6. 11 H. 6. c. 11. Pain of Assaulting a Member.

**8 H. 6. c. 1.** All the Clergy summoned to Convocation, and their Convocation Servants and Families, shall use and enjoy such Liberty Members the or Defence in coming, tarrying, and returning, as the same Privi- great Men and Commonalty of the Realm ought to en- lege as the joy. *Stat. 8 H. 6. c. 1.*  
**Commons.** An Act for levying the Wages of Members of Parlia-  
**23 H. 6. c. 11.** ment refused.

**Wages.** None of the Knights, Citizens, or Burgesses, or Barons, that shall be elected to come to Parliament, shall depart **6 H. 8. c. 16.** or absent themselves from the same till the Parliament be fully ended or prorogued, without Licence from the Speaker, entred upon Record, upon Pain of losing their **Pain of ab-** Wagers. *Stat. 6 H. 8. c. 16.*  
**senting from**  
**Parliament.**

**1 Jac. 1. c. 13.** Where any Person is taken in Execution, and by Privi-  
**NewExecution** lege of either House of Parliament is set at Liberty, the  
**where one is** Plaintiff, his Executors or Administrators, after such  
**delivered by** Time as the Privilege of that Session of Parliament shall  
**Privilege.** cease, may sue forth a new Execution, as he might have  
 done if no such former Execution had issued: And no  
 Sheriff or other Officer, from whose Arrest or Custody,  
 any such Person so taken in Execution, shall be delivered by  
 Privilege, shall be chargeable with any Action for deliver-  
 ing out of Execution such privileged Person. *1 Jac. 1. c. 13.*

**12 Car. 2. c. 1.** If any Person shall maliciously and advisedly, by  
**A Premunire** Writing, Printing, Preaching, or other Speaking, ex-  
**to affirm the** press, publish, utter, declare, or affirm, That both Houses  
**Houses of Par-** of Parliament, or either House of Parliament, have or hath  
**liament have** a Legislative Power without the King, or any Words to the  
**a Legislative** same Effect, such Offender shall incur a Premunire.  
**Power.** *Stat. 12 Car. 2. c. 1.*

**12 W. 3. c. 2.** No Person born out of the Kingdoms of *England, Scot-*  
**Aliens can-** *land and Ireland*, or the Dominions thereunto belonging,  
**not be Mem-** altho' he be naturalized or made a Denizen, except such  
**bers, tho' na-** as are born of *English* Parents, shall be capable to be a  
**turalized.** Member of either House of Parliament. *Stat. 12 W. 3. c. 2.*

**12 & 13 W. 3.** After the 24th of *June 1701.* any Person may com-  
**c. 3.** mence and prosecute any Action or Suit in any of the  
**Suit may be** Courts at *Westminster*, Court of Chancery, Exchequer,  
**against Mem-** Dutchy-Court, or Court of Admiralty: And in all Cau-  
**bers after Pro-** ses Matrimonial and Testamentary, in the Court of  
**rogation, and** Arches, the Prerogative Courts of *Canterbury* or *York*;  
**after any Ad-** and the Delegates, and all Courts of Appeal against any  
**journment,** Lord of Parliament, and Member of the House of Com-  
**for above** mons, and their Servants, or any others entitled to Pri-  
**fourteen Days.** vilege at any Time after the Dissolution or Prorogation  
 of a Parliament, until a new Parliament shall meet, or  
 the same shall be re-assembled, and after any Adjourn-  
 ment of both Houses for above the Space of fourteen

Days,

Days, until both Houses shall meet or re-assemble. 12 & 13 W. 3. c. 3.

And the said respective Courts, shall and may, after such Dissolution, Prorogation or Adjournment, proceed to give Judgment, and make final Orders, Decrees and Sentences, and award Execution thereupon. *Ib.*

Provided, That this shall not subject any Member of the House of Commons, or other Person entitled to Privilege, to be arrested during the Time of Privilege: But any Person having Cause of Action or Complaint against a Peer, may, after any Dissolution, Prorogation, or Adjournment as aforesaid, or before any Sessions or Meeting of the Houses, have such Process out of the King's Bench, Common-Pleas, and Exchequer, as he might have had out of the Time of Privilege: And any Person having Cause of Action against any Member of the House of Commons, or other Person entitled to Privilege after a Dissolution, Prorogation, or Adjournment as aforesaid, or before any Sessions, may prosecute such Member, &c. in the said Courts, by Summons and Distress, *infinite*, until he shall enter a common Appearance, &c. And any Person having Cause of Suit or Complaint in the Times aforesaid, may exhibit any Bill or Complaint against any Peer or Member, &c. in the Chancery or Exchequer, or Dutchy-Court, and may proceed by Letter or Subpœna, as usual, and leaving a Copy of the Bill with the Defendant, or at his last Place of Abode, may proceed therein; and for want of an Appearance or Answer, or for Non-performance of any Order or Decree, or for Breach thereof may sequester the real and personal Estate of the Party as usual, where the Defendant is a Peer; but shall not arrest the Body of any Knight, or other privileged Person, during the Continuance of Privilege of Parliament. *Ib.*

Saving the Privilege of their Persons during the Time of Privilege.

And where any Plaintiff shall be stay'd or prevented from proceeding by Privilege of Parliament, he shall not be barred by any Statute of Limitation, or non-suited, to the Plaintiff, or his Suit discontinued for want of Prosecution, but at the rising of the Parliament shall be at Liberty to proceed to Judgment and Execution. *Ib.*

And no Action, Suit, Process, &c. against the King's Suit against original and immediate Debtor, or Accomptant, for any the King's Part of the Revenue, or other original or immediate Debtor not to Debt or Duty, or the Execution of any such Process, &c. be stayed by Privilege; but the Person of such Debtor or Accomptant, being a Peer, shall not be liable to be arrested upon such Suit, &c. Or being a Member of the House of Commons,



mons, shall not, during the Continuance of Privilege; be arrested on such Process, &c. *Ib.*

Provided, that this Act shall not give any Jurisdiction to any Court to hold Plea in any real or mixed Action, otherwise than heretofore. *Ib.*

2 & 3 Ann.  
c. 18.

Persons in  
Places of  
Trust under  
the Govern-  
ment, may  
be prosecuted,  
notwithstand-  
ing their  
Privilege.

Any Action may be commenced and prosecuted in the Courts at *Westminster*, against an Officer, or Person intrusted or employed in the Revenues, or in any other Office or Place of publick Trust, for any Forfeiture, Misdemeanor, or Breach of Trust, relating to such Office or Place, or any Penalty imposed to enforce the Execution thereof; and no such Action, Proceeding, Judgment, or Execution thereupon, altho' such Person be a Peer or Member of the Commons, or otherwise entitled to Privilege of Parliament, shall be stayed or delayed under Colour of such Privilege. *Stat. 2 & 3 Ann. c. 18.*

Provided, that this Act shall not extend to subject the Person of such Officer, being a Peer, to be arrested or imprisoned, but such Process shall issue against him, as should have issued against him out of the Time of Privilege: Nor shall it extend to subject the Person of such Officer, being a Member of the Commons, to be arrested or imprisoned during the Time of Privilege; but against such Officer shall be issued Summons, Attachment and Distress *infinite*, until the Party shall appear according to the Course of the respective Courts. *Ib.*

6 Ann. c. 7.  
Parliament  
not dissolved  
by a Demise  
of the Crown.

No Parliament shall be dissolved by the Demise of her Majesty, her Heirs or Successors, but such Parliament, if Sitting, is impowred to proceed and act for six Months, notwithstanding such Demise, unless sooner prorogued or dissolved by the Successor: And if such Parliament shall be prorogued on a Demise of the Crown, it shall meet on the Day to which it is prorogued, and continue to sit and act the Residue of the said six Months, unless sooner prorogued or dissolved as aforesaid. *Stat. 6 Ann. c. 7.*

And if the Parliament, at the Time of such Demise, happens to be separated by Adjournment or Prorogation, it shall immediately meet and act for six Months, unless sooner prorogued or dissolved as aforesaid; and if there is no Parliament in being at such Demise, the last preceeding Parliament shall immediately meet, and continue to act as a Parliament, as if it had never been dissolved. *Ib.*

If no Parlia-  
ment in be-  
ing, the pre-  
ceeding Par-  
liament to  
assemble.

Provided, that this Act shall not alter or abridge the Power of the Queen, or her Successors, to prorogue or dissolve Parliaments, nor to repeal an Act of 6 & 7 W. & M. c. 2. entitled, *An Act for the frequent Meeting and Calling of Parliaments.* *Ib.*

READINGS.

READINGS.

The Parliament, says Sir Edward Coke, is the highest and most honourable, and absolute Court of Justice in England, consisting of the King, the Lords of Parliament, and the Commons: And again, the Lords are here divided into two Sorts, viz. Spiritual and Temporal: The Commons are divided into three Parts, viz. Into Knights of Shires or Counties, Citizens out of Cities, and Burgesses out of Boroughs. The Words of the Writ to the Sheriff for the Election, being *Duos milites gladios cinctos magis idoneos & discretiores comitatus tui, & de qualibet civitate comitatus tui duos cives, & de quolibet Burgo, duos Burghenses, de discretioribus & magis sufficientibus, &c. 1 Inst. 109 b.*

It is called *Parliament* he Conjectures, because every Member of that Court should sincerely and discreetly *parlez la ment*, speak his Mind for the general Good of the Commonwealth; which Name it hath also in Scotland: And this Word was used before the Conquest, in the Time of Edward the Confessor, he thought, to signify such an Assembly. It was anciently called *Michel Sinoth, Michel Gemote*, and also *Witena Gemote*; that is to say, The great Court or Meeting of the King and of all the wise Men; sometimes of the King, with the Counsel of his Bishops, Nobles, and wisest of his People. *Ib. 110.*

He adds, That divers Parliaments were holden before the Conquest, and produces an Instance of one held in the Reign of King Alfred, out of the *Mirror*, viz.

LE Roy Alfred Assemblez les Counties, &c. et ordenna per Usage perpetual, que deux foitz, per an ou plus sovent pur miste in temps de peace se Assemblerent a Londres a Parliamentez sur le guidement del People de Dieu et coment soy garderent de pecher vivront en quiet et recevront droit per Usages et sans Judgements per ceste estate se ficeront plusors ordonances per plusors Roys jesque a temps le Roy que ore est que fuit le Roy. E. 1. *Ib.*

He

He also gives us the Conclusion of a Parliament holden by King *Athelstan*, which he tells us he had seen in these Words. All this was enacted in that great Synod or Council at *Grately*, whereat was the Archbilhop *Wolfhelme*, with all the Noblemen and Wife Men which King *Athelstan* called together. *lb.*

Thus far Sir *Edward Coke*. And from these Authorities his unwary Readers have inferred, That Parliaments, as now constituted, are as ancient as the Times of the *Saxons*; whereas Dr. *Brady* has shewn, That the Word *Parliament* heretofore, signified no more than a great Council, and that those great Councils were sometimes composed of the Nobility and Clergy only, and at other Times, of the Nobility, Clergy, and Tenants, in *Capite*, or those who held of the Crown by Knight's Service, or Military Tenures; that these were the *Liberi Homines*, or Freemen of those Times; and that there was hardly such a Thing then as a Freeholder, in the Notion we entertain of Freeholders at this Day.

When Parliaments, as now constituted, began.

He shews further, That *Simon Mountford*, in the Reign of King *Henry III.* when he had that King Prisoner first, issued out Writs in his Name, for the electing two Knights for every County, to serve in Parliament; and that this Practice was again discontinued, till the 18th of *Edward I.* That then the Sheriff was commanded to Return two or three Knights for each County; and sometimes one Knight for a County; one Citizen to serve for a City, and one Burgeſs for a Borough, were ordered to be elected. At other Times he shews, That the King nominated the very Persons to be returned, and did not leave it to the Election of the People. Of these I shall give an Instance or two, this Matter having been very warmly contested. The first shall be, of a Parliament summoned in the 18th Year of *Edward I.* which Writ of Summons is as follows:

Edwardus



**E**Dwardus Dei Gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ, Vicecomiti Westmorlandiæ, salutem cum per Comites, Barones, & quosdam alios de proceribus Regni nostri nuper fuisset, super, quibusdam specialiter requisiti, super quibus iam cum ipsis, quam cum aliis de Comitibus Regni illius: Colloquium habere volumus, & tractatum tibi precipimus, quod duos vel tres de discretioribus, & ad laborandum potentioribus militibus, de Comitatu predicto sine dilatione Eligi, & eos ad nos usque Westmonasterium venire facias, ita quod sint ibidem a die sancti Johannis Bapt. prox. futur, in tres septimanas, ad ultimum, cum plena potestate pro se & comunitate comitat. predicti, ad Consulendum & consentiendum pro se & comunitate illa, hiis qua Comites, Barones, & Proceres predicti, tunc duxerint concordanda, & habeas ibi hoc breve. T. meipso apud Westmonast. 14 die Jun. Anno Regni nostri 18.

Writ of Summons 18 Ed. I. for electing two or three Knights.

**E**Dward by the Grace of God, King of England, Lord of Ireland, and Duke of Aquitaine, to the Sheriff of Westmorland, Greeting: Whereas we have been especially petitioned and requested, by the Earls, Barons, and others of the great Men of our Kingdom, concerning certain Matters, upon which we will have Conference and Treaty, as well with themselves as with others of the Counties of that Kingdom, we Command thee that without Delay thou makest to be chosen two or three of the discreetest and ablest Knights, for dispatch of Business of the County aforesaid, and cause them to come to us at Westminster, so that they be there in three Weeks after the Feast of St. John Baptist at farthest, with full Power for themselves, and the whole Community of the County aforesaid, to consult and consent, for themselves and that Community, to such Things which the Earls, Barons, and great Men aforesaid shall think fit to agree upon; and you are to have there this Writ. Witness my self at Westminster, the 14th Day of June, in the 18th Year of our Reign.

The next Writ I shall mention, issued in the 27th of Edward III. and is as follows, viz.

Writ of Summons 27 Ed. 3. for electing one Knight.

**E**Dwardus, Dei Gratia, Rex Anglia, &c. quia pro magnis & urgentibus Negotiis, nos & Statum Regni nostri Angl. summe concernentibus, cum Prelatis, Magnatibus, proceribus, & aliis fidelibus dicti Regni apud Westm. die Lunæ prox. post festum Sancti Mathei Apostoli, prox. futuri colloquium habere volumus & tractatum tibi precipimus firmiter injungentes, quod unum militem cinctum gladio de discretioribus militibus, & magis expertis de utroque Com. predictor assensu eorundem Com. sine dilatione eligi, & eos ad diem & locum predictos venire fac. Ita quod uterque eorundem militum pro se & communitate Com. sui plenam & sufficientem potestatem habeat, ad tractand. consulend. & consentiend. hiis quæ tunc Divina favente clementia de communi consilio contigerint ordinari super negotiis antedictis. Et hoc nullatenus omittas. T. meipso apud Westm. 15 de Jul. Anno Regni nostri Angl. Vicefimo Septimo, Regni vero nostri Franc. quarto decimo.

N. B. Writs issued at the same Time for electing two Burgeses for each Borough.

The last Writ I shall mention, issued the 45th of Edward III. viz.

Writ for sending a Knight, and certain Burgeses by Name.

**V**IC Kanc. Salutem, &c. tibi precipimus firmiter injungentes quod Thomam Apuldrefeld, unum Militem Com. predicti Edmundum Honre, unum Civem Civitatis Cantuar. & Johan. Fynchenfeld, unum Civium Civitatis Rossen &c. premunire facias quod ipsi omnibus aliis prætermis, & quacunque excusatione cessante in propriis Personis suis sint apud Wyn-ton, in Octabis Sanctæ Trinitatis prox. futur.

No Parliament till the King is present.

At the Return of the Writs the Parliament cannot begin, unless his Majesty be present, either in Person, or by Representation by Letters-Patents, or Commission; and if the Parliament be prorogued, upon Return of the Writs of Summons, it begins at the end of the Prorogation.

Every

Every Act must have the Consent of the Lords and Commons, but is properly the Act of the King, as appears by the Preambles of ancient Statutes.

The King need not be present at the passing Acts passed by of Parliament, it being declared by 33 H. 8. c. 21. Commission. That he may pass them by Commission under the Great Seal, signed by his Hand, and that such Acts ever were of equal Force with those passed by the King in Person.

The Lords and Commons, in the respective Jurisdiction Houses, have a Power of Judicature, and so have of the Peers both Houses together.

The House of Lords is a distinct Court to several Purposes: They try Criminal Causes on an Impeachment of the Commons, and have an Original Jurisdiction for the Trial of Peers, upon Indictments found by a Grand Jury. They also determine Causes upon Appeals from the Court of Chancery, or upon Writs of Error, to reverse Judgments.

The House of Commons is also a distinct Court of the Commons to many Purposes: They examine the Right of Elections, expel their own Members, and commit them to Prison, and sometimes other Persons; but how far their Authority extends in this Matter, is not yet determined. 4 Inst. 21, 22, 23, &c.

If a Lord be absent from the House, he may make his Proxy, but a Member of the Commons cannot.

A Member of Parliament shall have the Privilege of Parliament, not only for himself and his Privilege. Servants, to be freed from Arrests, Subpœna, Citations, &c. but for his Horses and Goods to be free from Distresses; but for Treason, Felony, and Breach of the Peace, there can be no Privilege. 4 Inst. 24, 25.

Every Session of Parliament is deemed in Law, a Of Prorogations and Adjournments. several Parliament; and by the Prorogation, such Bills as have passed either, or both Houses, not having received the Royal Fiat, must fall. An Adjournment does not make a Session, but all Things continue in the State they were before the Adjournment.



ment. An Adjournment may be by the respective Houses, but a Prorogation is commanded by the Prince: These are the principal Distinctions between Adjournments and Prorogations. The House of Commons is not prorogued or adjourned by the Prorogation or Adjournment of the Peers. 4 *Inst.* 28.

When a Parliament is dissolved without any Act or Judgment, it is said to be no Sessions, but a Convention.

Acts have Relation to the first Day of the Session.

Every Man in Judgment of Law, is Party to an Act of Parliament; all Acts relate to the first Day of the Session of Parliament in which they were made, if it be not otherwise provided by the Act. 4 *Inst.* 25. 27.

The Courts of Justice must take Notice of general or publick Acts, tho' they are not pleaded, but not of particular or private Acts, without pleading. 1 *Inst.* 98.

The Preamble or Rehearfal of a Statute is deemed true, and therefore good Arguments may be drawn from the Preamble. 1 *Inst.* 11.

Superior Officers not bound where inferior Officers only are mention'd.

Acts against the Power of subsequent Parliaments, not binding.

Where a Clause of an Act mentions only inferior Persons or Things, it shall not be extended by general Words to those of a superior Order. 2 *Rep.* 46.

Old Statutes must give Place to new, where they are contrary; but an affirmative Act does not repeal a precedent, affirmative Act; and Acts of Parliament against the Power of subsequent Parliaments, are not binding, notwithstanding the Statute of 42 *Ed.* 3. c. 3, which declares, That any Statute made against *Magna Charta*, or the Charter of the Forest, shall be void: And this is evident, seeing many Parts of *Magna Charta* have been repealed and altered by subsequent Acts.

Repealed Statute revived.

By Repealing of a Repealing Statute, the first Statute is revived.

Bills of Attainder.

In passing Bills of Attainder, it has been held, That neither Articles, Charge, or Evidence are necessary, but private Satisfaction to every Man's Conscience is sufficient. *State Trials*, Vol. 1. 677.

Orders

Orders of Parliament determine at the Session. Orders.

*Ib.* 634.

A Subject of *England*, residing in *Ireland*, or in Jurisdiction. any other Country, Parcel of the Dominions of this Crown, cannot plead to the Jurisdiction of the Parliament of *England*. *Ib.* 353.

The Courts at *Westminster* may judge of the Privi- Privilege. lege of Parliament, where it is incident to a Suit the Court is possessed of, but not of Matters arising originally in Parliament. *State Trials. Vol. 2.* 66.

Appeals, Writs of Errors, and Impeachments, Appeals, Writs remain in the same State on calling a new Parlia- of Error, &c. ment they were in at the Dissolution of the old.

But inferior Courts may proceed to Execution between the Sessions, notwithstanding Appeals or Writs of Error lodged in the House of Peers. *State Trials, Vol. 2.* 209.

The Parliament, in their judicial Capacity, are governed by the Common and Statute Laws, as well as the Courts in *Westminster-Hall*. *State Trials, Vol. 2.* 735. *Vol. 4.* 311.

Acts of Parliament do not bind the King, ex- Where Acts cept he is specially named, or unless they concern bind the King. the Commonwealth, suppress Wrong, take away Fraud, or prevent the decay of Religion. The commons Words, *No Person or Persons, Bodies Politick or Corporate*, do bind him, tho' the Statute is in the Negative. But he may take Benefit of any Act, tho' he is not named. 2 *Inff.* 681. 7 *Rep.* 32.

See *Titles, Election, Oaths, Papists, Petitions.*

## Partition and Parceners.

ALL Joint-Tenants, and Tenants in Common, of any 31 *H. 8. c. 1.* Estate of Inheritance in their own or their Wife's Joint-tenants, Rights, may be compelled to make Partition of all such &c. compel- Lands, Tenements, or Hereditaments, as they shall hold led to make as Joint-Tenants, or Tenants in common, by Writ de Partition. *Partitioe facienda*, in like Manner as Coparceners by the common Law may be compelled to do. *Stat. 31 H. 8. cap. 1.* 2 3 Pro-

Provided, that such Joint-Tenants, or Tenants in Common, and their Heirs, after such Partition made, shall have Aid of the other, or of their Heirs, to the Intent to dereign the Warranty Paramount, as used between Coparceners. *Ib.*

32 H. 8. c. 32. All Joint-Tenants, and Tenants in common, which Joint-Tenants shall hold jointly or in common for Term of Life or for Life or Years, or where one or some of them shall have Estates for Term of Life or Years, with others which shall have Estates of Inheritance or Freehold, in any Lands, Tenements, or Hereditaments, shall be compellable, by Writ of Partition, to make Severance and Partition of all such Lands, &c. which they so hold jointly or in common, for Terms of Lives or Years, &c. Stat. 32 H. 8. c. 32.

Provided, that such Partition be not prejudicial to any Person, other than such as are Parties to the said Partition, their Executors or Assigns. *Ib.*

8 & 9 W. 3. c. 31. After the 1st of May 1697, after Process of *Pone* or Attachment returned, upon a Writ of Partition, Affidavit being made by any credible Person, of due Notice given of the said Writ to the Tenants, to the Action, and a Copy left with the Occupier or Tenants, or to the Wife, Son or Daughter (being twenty one Years of Age) of the Tenants, or to the Tenant in actual Possession, by Vertue of any Estate of Freehold, or Term of Years, or uncertain Interest, or at Will, of the Lands, &c. whereof Partition is demanded (unless the said Tenant in actual Possession, be Demandant in the Action) at least forty Days before the Day of Return of the said *Pone* or Attachment. If the Tenant to such Writ, or the true Tenant to the Lands, &c. shall not in such Case, within fifteen Days after Return of such *Pone* or Attachment, cause an Appearance to be entred, then the Demandant, having entred his Declaration, the Court may proceed to examine the Demandant's Title, and Quantity of his Part, and Purpart, and accordingly give Judgment by Default, and award a Writ to make Partition, whereby such Part or Purpart may be set out severally; which Writ being executed after eight Days Notice given to the Occupier or Tenants of the Premises, and returned, and thereupon final Judgment entred, shall conclude all Persons, altho' Reversing the all Persons concerned are not named in any of the Proceedings, nor the Title of the Defendants truly set forth. Stat. 8 & 9 W. 3. c. 31.

Proviso for  
Reversing the  
Judgment on  
such Parti-  
tion, upon  
Cause shewn  
within one  
Year after.

Provided, that if such Tenant, or Person concerned, against whom, or their Right or Title, such Judgment by Default is given, shall within one Year after the first Judgment entred, or in Case of Infancy, Coverture, *non*  
*sana*



*sana Memoria, &c.* or Absence out of the Kingdom, shall within one Year after Return or Determination of such Inability, apply to the same Court, and shew probable Matter in Bar of such Partition, or that the Demandant hath not Title to so much as he hath recovered, then the Court may suspend or set aside such Judgment, and admit the Tenants to appear and plead; and the Cause shall proceed as if no such Judgment had been given: And if the Court adjudge for the first Demandant, the first Judgment shall stand confirmed, and be good against all Persons, except such as shall be absent, or disabled as aforesaid, and the Persons appealing shall pay Costs. *lb.*

Or if within such Times as aforesaid, the Tenants or Persons concerned, admitting the Demandant's Title, Parts, and Purparts, shall shew the Court any Inequality in the Partition, the Court may award a new Partition in Presence of all Parties concerned, if they will appear, notwithstanding the Return and Filing upon Record the former; which second Partition returned and filed, shall be good against all Persons, except as before excepted. *lb.*

And no Plea in Abatement shall be admitted or received No Plea in A- in any Suit for Partition; Nor shall the same be abated batement to a by the Death of any Tenant. *lb.*

And if the High-Sheriff, by Reason of Distance, In- tion. firmity, or other Hindrance, cannot conveniently be Under-Sheriff present at the Execution of any Judgment in Partition, may execute then the Under-Sheriff, in Presence of two Justices of the a Writ of Par- Peace of the County where the Lands lie, shall proceed titition in Pre- to Execution of the Writ of Partition, by Inquisition in sence of two due Form of Law: And the High-Sheriff thereupon, is Justices. hereby required to make the same Return as if he had been Personally present. *lb.*

And when such Partition is made, returned, and filed, 8 & 9 W. 3. the Persons who were Tenants of the said Lands, or of c. 31. any Part, or Purpart thereof, before they were divided, Tenants to shall continue Tenants of the Lands they held, to the enjoy their respective Landlords or Owners thereof, by and under the Leases, not- same Conditions, Rents, Covenants, and Reservations, withstanding they were before; and the Landlords and Owners of the the Partition. several Purparts, so divided, shall warrant and make good to their respective Tenants, the said several Parts, after such Partition, as they were bound to do by any Copy, Leases, or Grants of their respective Parts, before any Partition made. *lb.*

And in Case any Demandant be Tenant in actual Pos- session, to the Tenant to the Action, for his Part or Por- tion in the Lands divided, for Term of Life, Years,

PARTITION *and* PARCENERS.

or any uncertain Interest, the said Tenant shall stand possessed of the said Purparts and Proportion for the like Term, and under the same Conditions and Covenants when it is set out in severally, as he did before.

And the respective Sheriffs, their Under-Sheriffs and Deputies, and in Case of Sickness or Disability in the High-Sheriff, all Justices of Peace are required to attend the executing such Writ of Partition, (unless reasonable Cause be shewn) or be liable to pay the Demandant such Costs and Damages as shall be awarded by the Court, not exceeding 5 *l.* for which the Plaintiff or Demandant may bring his Action. *Ib.*

Fees.

And if the Demandant doth not agree to pay unto the Sheriffs, Under-Sheriffs, Justices and Jurors, such Fees as they shall demand for their Pains and Attendance in executing the same, and returning thereof, then the Court shall award what such Person shall receive, for which they may severally bring their Actions. *Ib.*

This Act to continue for seven Years. *Ib.*

4 & 5 Ann.  
c. 16.

Actions by  
one Joint-Tenant  
against  
the other.

Actions of Account may be brought by one Joint-Tenant, and Tenant in common, his Executors and Administrators, against the others, as Bailiff, for receiving more than comes to his just Share, and against the Executor and Administrator of such Joint-Tenant, and Tenant in common. *Stat. 4 & 5 Ann. c. 16.*

7 Ann. c. 18.  
Partition of  
an Advowson.

Coparceners, Joint-Tenants, and Tenants in common, having made Partition of an Advowson, to present by Turns, each shall be seised in Law of his or her separate Part of the Advowson to present in his or her Turn. *Stat. 7 Ann. c. 18.*

## R E A D I N G S.

Parceners at  
Common  
Law.

Parceners are of two Sorts (to wit) Parceners according to the Course of the Common Law, and Parceners according to Custom. Parceners after the Course of the Common Law, are where a Man or a Woman, seised of certain Lands or Tenements in Fee-Simple, or in Tail, hath no Issue but Daughters, and dieth, and the Tenements descend to the Daughters, who enter into the Lands or Tenements so descended to them, then they are called Parceners, and are but one Heir to their Ancestor : And they are called Parceners, because by the Writ, which is called *breve de Particione facienda*,

enda, the Law will constrain them that Partition shall be made among them. *Litt. Sect. 124.*

Also if a Man seised of Tenements in Fee-Simple, or in Fee-Tail, dieth without Issue of his Body begotten, and the Tenements descend to his Sisters, they are Parceners as is aforesaid; and in the same Manner, where he hath no Sisters, but the Lands descend to his Aunts, they are Parceners, &c. But if a Man hath but one Daughter, she shall not be called Parcener, but she is called Daughter and Heir, &c. *Littleton Sect. 242.*

Parceners by the Custom, are, where a Man seised <sup>Parceners by</sup> in Fee-Simple, or in Fee-Tail of Lands or Tene- <sup>Custom.</sup> ments which are of the Tenure called *Gavelkind*, within the County of *Kent*, and hath Issue divers Sons, and die, such Lands or Tenements shall descend to all the Sons by the Custom, who shall equally inherit and make Partition by the Custom, as Females shall do, and a Writ of Partition lieth in this Case, as between Females; but it behoveth in the Declaration to make mention of the Custom: Also such Custom is in other Places of *England*; and also such Custom is in *North Wales*, &c. *Littleton, Sect. 265.*

If a Man has Issue two Daughters, and the eldest Nephew <sup>Co-</sup> hath Issue divers Sons and divers Daughters, and <sup>parceners</sup> the youngest hath Issue divers Daughters, the eldest <sup>with Nieces.</sup> Son of the eldest Daughter shall only inherit, for this Descent is not *in Capite*, but all the Daughters of the youngest shall inherit, and the eldest Son is Coparcener with the Daughters of the youngest, and shall have one Moiety, (*viz*) his Mother's Part; so that Men descending of Daughters, may be Coparceners as well as Women, and shall jointly implead, and be impleaded. *1 Inst. 164. b.*

If Coparceners make a Partition at full Age, and <sup>When a Parti-</sup> unmarried, and of sane Memory, of Lands in <sup>tion shall be</sup> Fee, it is good and firm for ever, altho' the Va- <sup>binding.</sup> lues be unequal; but if it be of Lands entailed, or if any of the Parceners be of *non sane memorie*, it shall bind the Parties themselves, but not their Issues, unless it be equal: Or if any be Covert, it shall bind the Husband, but not the Wife or her Heirs:



PARTITION *and* PARCENERS.

Heirs : Or if any be within Age, it shall not bind the Infant. 1 *Inst.* 166.

Feoffment, a Severance of the Coparcenership.

And Marriage

Return of Writ of Partition.

Rent granted for Equality of Partition.

If one Coparcener make a Feoffment in Fee of her Part, this is a Severance of the Coparcenary, and several Writs of *Præcipe* shall lie against the other Coparceners and the Feoffee. 1 *Inst.* 167.

If two Coparceners be, and each of them taketh Husband, and have Issue, the Wives die, the Coparcenary is divided, and here is a Partition in Law. *Ib.*

The Partition made and delivered by the Sheriff and Jurors, ought to be returned into the Court, under the Seal of the Sheriff, and the Seals of the twelve Jurors, for the Words of the Judicial Writ of Partition, which doth command the Sheriff to make Partition, are *Assumptis tecum, 12, &c.* (so as there must be 12) & *Partitionem inde, &c. scire facias Justiciariis, &c. sub Sigillo tuo & Sigillis eorum per quorum Sacramentum Partitionem illam feceris, &c.* 1 *Inst.* 168. *b.*

If there be three Coparceners, and they make Partition, and one of them grant twenty Shillings *per Ann.* out of her Part, to her two Sisters, and their Heirs, for Equality of Partition, the Grantees are not Joint-Tenants of this Rent, but the Rent is in Nature of the Coparcenary; and after the Death of the one Grantee, the Moiety of the Rent shall descend to her Issue in Course of Coparcenary, and not survive to the other; for that the Rent doth come in Recompence of the Land, and therefore shall ensue the Nature thereof; and if the Grant had been made to them two, of a Rent of twenty Shillings, *viz.* to the one ten Shillings, and to the other ten Shillings, yet shall they have the Rent in Course of Coparcenary, and join in Action for the same. 1 *Inst.* 160. *b.*

If one Coparcener be married, and for Owelty of Partition the Husband and Wife grant a Rent to the other two, out of the Part of the Feme Covert, this Partition being equal, shall charge the Part of the Feme Covert forever. *Ib.*

If two Coparceners, by Deed indented, alien both their Parts to another in Fee, rendring to them two, and their Heirs, a Rent out of the Land, they are not Joint-Tenants of this Rent, but they shall have the Rent in Course of Coparcenary, because their Right in the Land out of which the Rent is reserved, was in Coparcenary.

*Ib.*

None are called Parceners by the Common Law, Sisters who but Females, or the Heirs of Females, which purchase, are came to Lands or Tenements by Descent: for if Sisters purchase Lands or Tenements, of this they are called Joint-Tenants, and not Parceners. *Lit-leton, Sect. 254.*

If the Partition be made by Force of the King's Writ, and Judgment thereof given, it shall bind the Feme Coverts for ever, albeit the Parts be of equal annual Value, because it is made by the Sheriff, by the Oath of twelve Men, by Authority of Law, and the Judgment is, That Partition shall remain firm and stable for ever. *1 Inst. 171.*

### Perjury.

**A**LL Persons who shall unlawfully and corruptly procure any Witnesses, by Letters, Rewards, Promises, or other sinister and unlawful Means, to commit wilful and corrupt Perjury in any Matter or Cause whatsoever, which shall depend in Suit and Variance, by any Writ, Action, Bill, Complaint, or Information, touching any Lands, Tenements, or Hereditaments, or any Goods, Chattels, Debts or Damages, in any of her Majesty's Courts of Record, or in any Leet, View of Frank Pledge, or Law Day, ancient Demesne Court, Hundred Court, Court Baron, or in the Courts of Stannary in *Devon and Cornwall*, or shall corruptly procure or suborn any Witnesses, which shall be sworn, to testify *in perjuriam rei memoriam*, every such Offender shall forfeit the Sum of forty Pounds; and if he be not worth 40 *l.* he shall suffer half a Year's Imprisonment without Bail or Mainprize, and stand on the Pillory for an Hour, in open Market, in some Town next adjoining to the Place where the Offence was committed, or in the same Market-Town where he offended. *Stat. 5 Eliz. c. 9.*

*5 Eliz. c. 9.*  
Pain of 40 *l.*  
for Subornation of Perjury.

Or six Months  
Imprisonment, and  
Pillory.

And

**Offender disabled to be a Witness.** And no Person, so convicted or attainted, shall afterwards be received as a Witness in any Court of Record, until such Judgment be reversed; but upon such Reversal, the Party grieved shall recover his Damages against the Person who procured the said Judgment, by an Action on the Case. *Ib.*

**Pain of 20 l. for Perjury, and six Months Imprisonment,** And if any Person, either by Subornation, or Procurement of another, or by his own Act, shall commit wilful and corrupt Perjury, by his Deposition in any of the Courts aforesaid, or being examined *ad perpetuam rei memoriam*, such Offender shall forfeit 20 l. and suffer six Months Imprisonment, without Bail or Mainprize; and the Oath of such Offender shall not afterwards be received in any Court of Record, until the Judgment against him shall be reversed; and in such Case he shall have his Damages as aforesaid. *Ib.*

**If unable to pay the Forfeiture, his Ears to be nailed to the Pillory.** And if such Offender shall not have Goods to the Value of 20 l. then he shall be set on the Pillory in some Market Place in the County, City, or Borough where the Offence shall be committed, and have both his Ears nailed thereto, and shall from thenceforth be discredited and disabled to be sworn in any of the Courts of Record aforesaid, until such Judgment be reversed, whereupon he shall recover his Damages aforesaid. *Ib.*

**Forfeitures between the Crown and the Party grieved.** All Forfeitures by this Act, shall be equally divided between the Crown, and the Party grieved; and this Act shall be proclaimed at the Assizes twice every Year. *Ib.*

Provided, that this Act do not extend to any Spiritual or Ecclesiastical Court; but such Offenders may be punished by such usual and ordinary Laws as have been used in the said Ecclesiastical Courts. *Ib.*

**Witnesses not appearing, to give their Testimony upon tender of their Charges, forfeit 10 l.** Provided, that if any Person upon whom any Process out of any Court of Record, shall be served, to testify concerning any Cause or Matter depending in the said Courts, and having his Charges tendered him according to his Quality, and the Distance of the Place, do not appear according to the said Process, having no lawful or reasonable Lett to the contrary, that then the Party, so making Default, shall forfeit 10 l. and yield such further Recompence to the Party grieved, as shall be awarded by the Judge of the Court out of which the Process issued, to be recovered by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record. *Ib.*

**7 & 8. W. 3. c. 34.** If any Quaker shall be lawfully convicted to have wilfully, falsely, and corruptly made his solemn Affirmation and Declaration allowed by the Act, he shall incur the same Penalty as Persons convicted of wilful Perjury. *Stat. 7 & 8 W. 3. c. 34.*

READING S.



READINGS.

Perjury, in a legal Sense, is a Crime committed by wilful and false Swearing absolutely, in any judicial Proceedings, in a Matter material to the Issue or Point in Question (when a lawful Oath is administered by one that hath Authority to do it) by the Subornation of others, or by their own Act. 3 *Inst.* 164. Perjury defined.

A false Witness, according to Sir *Edward Coke*, is called *Perjurus, quia perperam jurat*. Perjury, before the Conquest, was punished sometime by Death, sometime by Banishment, and sometime by corporal Punishment, &c. 3 *Inst.* 163. Afterwards it came to Fine and Ransome, and never to bear Testimony.

In the Case of *Rowland Ap. Eliza*, it was held, first, That Perjury in a Witness was punishable by the Common Law. 2. That Perjury in a Witness for the King, was punishable by the Common Law, either upon an Indictment or Information. 3 *Inst.* 164. Punishable by Common Law.

Where a Court has no Authority to hold Plea No Breach of of the Cause, but it is *Coram non Judice*, there Perjury cannot be committed, c. *Ibid.* 166. And tho' an Oath be given by him that has lawful Authority, and it is broken, if it be not in a judicial Proceeding, it is not punishable as Perjury, either by Common or Statute Law, as where one takes an Oath to the Government, or duly to perform an Office, and breaks it; and if a Defendant perjureth himself in the Chancery or Exchequer-Chamber in his Answer, he is not punishable by this Statute. Promissory Oaths punishable as Perjury.

To make an Offence Perjury also, it must be wilful and deliberate, and not committed through Surprise, Inadvertency, or Mistake of the Question, and the Deposition must be direct and absolute, and not as he thinks, remembers, or believes. Where a false Oath shall incur the Pains of Perjury.

It

It must be false, either in exprefs Words or Intentions, for Fallhood in Intention may be punished by Common Law, tho' the Words be true; and if one knows not what he swears, 'tis a false Oath in him, tho' he happen to swear the Truth; as where the Plaintiff caused two Men to swear the Value of his Goods, who never saw or knew them, tho' that which they swore was true; yet because they knew it not, it was a false Oath in them, for which both the Procurer and the Witnesses were sentenced in the Star-Chamber. *Gurney's Case. Mich. 9. Jac. 3 Inst. 166.*

If the Oath is not of any Consequence in the Decision of the Cause in Issue, tho' it be a false Oath, 'tis not to be punished as Perjury, there being no malicious Design to be presumed.

Subornation  
defined.

Subornation, from *Subornare*, to prepare beforehand. Subornation of Perjury, is the procuring another to take a false Oath, amounting to Perjury; but if he doth not take it, the Person who incited him is not guilty of Subornation of Perjury, tho' he is punishable by a Fine.

The Words *wilfully and corruptly*, must be inserted in the Prosecution upon the Statute, or the Count will be vicious.

Who is punishable in  
the Common  
Law, and  
who by the  
Statute.

The Statute extends to no other Perjury than that of a Witness; but Persons perjuring themselves in their Answers in Chancery, in the Exchequer-Chamber, by Affidavit, or Swearing the Peace against another, may be punished for Perjury at Common Law.

No false Oath is within the Intent of the Act, which is not prejudicial to some Person, and gives him just Cause of Complaint, That he was grieved and molested by the Deposition of the Witness.

Perjury punished in  
Chancery.

A Bill in Chancery was filed against *B*, and *B* put in his Answer, and made Affidavit, That *C* was so ill that he could not travel: When the Cause came to be heard, *C* came into Court, and affirmed, That he was not sick, but that it was a Contrivance of *B*, who desired him to feign himself sick in Bed, that he might depose he left him so. The Lord-Keeper *Egerton* ordered both Parties  
to

to attend, and to be examined on Interrogatories, and *B* denied the Practice, but *C* affirmed it, and produced some Witnesses, who proved it very plainly; now this being a double Perjury, for making a false Affidavit, and afterwards denying the Practice on Interrogatories, he was fined 20 *l.* to the Queen, and committed. From whence it appears that the Court of Chancery may, in some Cases, punish this Crime of Perjury.

Altho' it hath been held, as is hinted above, Where Perjury That he who makes a false Affidavit against one in *ry* may be a Court of Justice, is not within the Statute of the committed, 5th *Eliz.* possibly the Books which seem to countenance this Opinion, may be mistaken, and ought to be understood only of such Affidavits as no way relate to any Cause depending in Suit before such Court; for if they be of such a Nature that either of the Parties in Variance be grieved, hindered, or molested in respect of their Cause in such Court, by Reason of their Perjury, as where a Trial is put off, or as a Judgment or Execution set aside upon a false Affidavit, the Offence seems to be not only within the Meaning of the Statute, but also within the very Letter of it, unless the Words *Witnesses* and *Depositions* are confined to so strict a Signification, as to bear no kind of Application to any other Persons or Oaths, except those which are made use of upon the Trial of the Issue in Question, for which Mr. *Hawkins* observes there is good Authority: However, partly perhaps from this Notion, and partly because the Statute speaks expressly only of Depositions in the Courts above-mentioned, it hath been questioned whether a false Oath before a Sheriff, upon a Writ of Enquiry of Or deposing Damages, be within the Statute or not. But if it be considered, That the Party to whose Prejudice such a false Oath is taken, is as much grieved by it as if it had been taken in the very Court, and the principal Judgment of the Cause depends upon such an Enquiry, and the Depositions made before the Sheriff, may as properly be said to be Depositions in the Court, by which the Sheriff is commissioned to take the Enquiry, as Depositions taken before



before Justices of *Nisi prius*, upon a Trial of an Issue joined in a superior Court, which are undoubtedly within the Meaning of the Statute; and also, inasmuch as those who give Evidence before a Sheriff upon such an Enquiry, may in the common Use of the Word, be as properly called Witnesses, as those who give Evidence before the Court in which an Issue is joined; it seemeth to be the more plausible Opinion, That such a Perjury is within the Statute; but since it is disputable whether it be so or no, and it is certain that it is Perjury at the Common Law, and that in all Cases whatsoever, where a Man takes a false Oath, which is not Perjury within the Statute, but is looked on as Perjury at Common Law, he is still punishable for it by Indictment or Information at the Common Law, it is certainly most adviseable to prosecute such an Offender at the Common Law, and not upon the Statute. *Hawkins 180.*

### Petition.

13 *Car. 2. c. 5.* **N**O Person after the 1st of *August 1661*, shall solicit, labour, or procure the getting of Hands, or other None to procure Hands to Consent, of any Persons above the Number of Twenty, Petitions to to any Petition, Complaint, Remonstrance, Declaration, the King or or other Address to the King, or to both or either House Parliament, of Parliament, for Alteration of Matters established by unless ordered Law in Church or State, unless the Matter thereof hath by the Grand- been first consented to and ordered by three or more Jury, or three Justices of the County, or a Majority of the Grand- Justices, at Jury of the County or Division where the Matter shall the Assizes or arise, at their Assizes or Quarter-Sessions; or if arising in Sessions. London, by the Lord-Mayor, Aldermen, and Commons, Or attend the in Common-Council assembled: And no Person shall re- King with pair to the King, or both or either House of Parliament, above the on Pretence of presenting any Petition, Complaint, Number Ten, Remonstrance, or Declaration, or other Address, accom- on Pain of panied with above the Number of Ten Persons, on Pain of 100 *l.* and of 100 *l.* and three Months Imprisonment, without Bail three Months or Mainprize, to be prosecuted in the Court of King's- Imprison- Bench, or at the Assizes and Quarter-Sessions, within six ment. Months after the Offence, and proved by two Wit- nesses. *Stat. 13 Car. 2. c. 5.* Provided,

Provided, that this Act do not extend to any Address Not to extend to his Majesty, by all or any of the Members [of both, to Addressees of or either House of Parliament, during the Sitting of Parliament. *Ib.*

R E A D I N G S .

By this Act of 13 *Car.* 2. it appears, That no Persons whatever may solicit the getting above Twenty Hands to any Petition or Address to King or Parliament, for the Alteration of any Thing in Church or State, without the Consent of three Justices of Peace, or the Grand-Jury of the County.

Secondly, If such a Petition be ordered by three Justices, or the Grand-Jury, it must not be presented by more than Ten Persons.

Thirdly, If both these are observed, great Care <sup>Care to be taken that the</sup> must be taken that the Petition contain nothing which may be interpreted to reflect on the Admi- <sup>Petition be</sup> nistration ; for if it do, it may come under the <sup>not a Libel.</sup> Denomination of a Libel ; as may be inferred from the Trial of the Seven Bishops, whose Petition, tho' drawn up with all the Submission to his Majesty imaginable, and presented but by Six of their Order, was in some Danger of being construed a Libel.

'Tis remarkable also, That the Petition of the City of *London*, for the Sitting of a Parliament, was deemed to be Libellous, for that it suggested, That the King's Dissolving the late Parliament was an Obstruction of Justice.

And in the Time of King *James I.* it was held to be a high Misdemeanour, and next to Treason, to Petition the King, to put the Penal Laws in Execution.

See *Title, Libels.*

A a      Physicians

## Physicians and Surgeons.

**3 H. 8. c. 11.** **N**O Person within the City of *London*, or seven Miles thereof, shall practise as a Physician or Surgeon, unless he be first examined, approved, and admitted by the Bishop of *London*, or the Dean of *St. Paul's*, assisted by four Doctors of Physick, and for Surgery, by four expert Persons in that Faculty, on Pain of *5*l.** one Moiety *London*, without to the Crown, and the other to him that will sue for the Licence of the same. *Stat. 3 H. 8. c. 11.*

**Bishop, &c.** And no Person beyond the said City and Precinct of Seven Miles, unless approved as aforesaid, shall practise Physick or Surgery in any Diocese within this Realm, except he be first approved by the Bishop of the Diocese, and in the Bishop's Absence, by his Vicar-General, assisted by such expert Persons in the said Faculties, as they shall call for that Purpose, and give their Letters Testimonial to, upon the like Pain, to be levied and employed as aforesaid. *Ib.*

**Saving the Privileges of the Universities.** Provided this Act be not prejudicial to the Universities of *Oxford* or *Cambridge*, or to any Privilege granted them. *Ib.*

**5 H. 8. c. 6.** Surgeons of *London* are discharged of serving as Constables, Watch, and all Manner of Offices, bearing any Armour, and also of all Inquests and Juries within the City. And this Act is declared to extend to all Barber-Surgeons admitted and approved according to the aforesaid Act of *3 H. 8. Stat. 5 H. 8. c. 6.*

**14 & 15 H. 8. c. 5.** In this Act is contained his Majesty's Letters Patent of Incorporation of the Physicians of *London*, the Substance whereof is, That they shall remain a perpetual College of Physicians, and have Power to chuse a President Yearly, and shall have perpetual Succession, a common Seal, and Ability of purchasing Lands not exceeding Twelve Pounds a Year: That they shall have Power to make Ordinances for the Government of the said College, and of all others that practise Physick within the said City, and seven Miles thereof; and if any one shall practise Physick within that Compass, without the Licence of the said College, under their Seal, he shall forfeit *5*l.** to be divided between the King and the College: That Four Physicians shall be yearly chosen, to oversee the rest, and examine the Medicines and Receipts; and that such as offend, shall be punished by Fines, Amercements, and Imprisonment, or by other reasonable Ways and Means; and that the Physicians of *London* shall

**None to practise within seven Miles of *London*, without their Licence, on Pain of *5*l.**** Censors to be chosen. Punishment of unskillful Practisers.



shall not be put upon Inquests in the said City, or else-Exemption  
where. Stat. 14 & 15 H. 8. c. 5. from being

The said Letters Patents are hereby ratified and cono Jurors.  
firmed; and it is further enacted, That eight of the The Letters  
said College, chosen from among themselves, should Patents con-  
be called Elects, and that those Elects should yearly chuse firmed.  
one out of their Number, to be President, and as often as Three Elects.  
the Places of any of the said Elects shall be void, ano-None to pra-  
ther shall be chosen to succeed him: And that no Person etise Physick  
shall be suffered to practise Physick in any other Part of without Li-  
England, until he is examined at London, by the Pre-cence of the  
sident, and three of the Elects, and obtain Letters Testi-College,  
monials for that Purpose, unless he be a Graduate of Unless a Gra-  
Oxford or Cambridge, who has performed his Exercifes duate.  
without Grace. Ib.

All Members of the College of Physicians in London, 32 H. 8. c. 40  
shall be discharged of keeping Watch or Ward in the said Physicians of  
City and Suburbs thereof; nor shall any of them be London dis-  
chosen Constable or other Officer within the said City or charged from  
Suburbs, and every such Election shall be void. Stat. Parish Offi-  
32 H. 8. c. 40. ces.

And it shall be lawful for the President and Fellows of Cenfors to ex-  
the said College, yearly to chuse Four of their Number, amine Apo-  
who shall have Power, after they are sworn, to enter thecaries  
the House of any Apothecary in the said City, to search Drugs, with  
and view his Wares and Drugs; and such as they shall the Warden  
find defective and corrupted, having called to their Assi-of the Com-  
stance the Wardens of the Mystery of Apothecaries, or pany.  
one of them, shall cause to be burnt or otherwise de-And destroy  
stroyed: And every Apothecary that shall deny the said the faulty.  
Four Physicians Entrance into his House, &c. to search  
and try his Drugs, shall forfeit 5 l. one half to the King, Pain of 5 l.  
and the other to him that will sue for the same; and eve-for hindring  
ry of the said Persons so chosen, refusing to be sworn, or Search.  
to make the said Search once in the Year, shall forfeit  
40 s. Ib.

And every Member of the College of Physicians, is Physician  
hereby authorized to practise Surgery in London, or else-may practise  
where within the Realm. Ib. Surgery.

The Barbers and Surgeons of London, are by this Act 32 H. 8. c. 42.  
united and made one Company or Corporation; and all Barbers and  
Members of the said Company, who shall be admitted to Surgeons made  
practise Surgery, shall be exempted from bearing of Ar-oneCompany.  
mour, and from being put upon Watches or Inquests: Surgeons ex-  
And the said Company, and their Successors, shall have empre) fram  
the Oversight and Correction, as well of Freemen as Fo-bearing Arms,  
reigners, for such Offences as they shall commit against serving on  
the good Order of Barbery or Surgery, as heretofore Juries, &c.

among the said Mystery and Company of Barbers of London hath been accustomed. Stat. 32 H. 8. c. 42.

**Allowed four condemned Felons for Anatomies.**

And the said Company of Barber-Surgeons shall have free Liberty yearly, to take Four Persons condemned for Felony, for Anatomies yearly. *lb.*

**No Barber about London to practise Surgery, Or Surgeon Barbary. Surgeon to have a Sign.**

And no Barber in London, or within one Mile thereof, shall practise Surgery, Letting of Blood, or any other Thing relating thereto, except Drawing of Teeth; nor shall any Person who practises Surgery within those Limits, exercise the Craft of a Barber; and all Persons practising Surgery in London, or within one Mile thereof, shall have an open Sign in the Street where they dwell, that all People may know where to resort to them. *lb.*

And no Person shall have or keep a Barber's Shop in London, unless he be a Freeman. *lb.*

**Two Surgeons and two Barbers to be chosen Masters.**

And there shall be chosen yearly Four Masters for the said Company, of which, two shall be expert in Surgery, and the other two in Barbary, who shall have Power to punish and correct all Defaults in the said Company; and every Person who shall offend in any of the Articles aforesaid, shall forfeit 5 *l.* for every Month he shall so offend, one Moiety to the King, and the other to him that will sue for the same. *lb.*

**Offenders against this Act forfeit 5 *l.***

Provided, that the said Barbers and Surgeons shall pay Scot and Lot, and other Charges as formerly. *lb.*

**Barbers or Surgeons returned as Servants.**

Provided it shall be lawful for any Person, not being a Barber or Surgeon, to retain in his House as a Servant, a Barber or Surgeon, who may exercise his Art in his Master's House, or elsewhere, by his Licence. *lb.*

**34 & 35 H. 8. c. 8.**

It shall be lawful for any of the King's Subjects, having Knowledge and Experience in the Nature of Herbs, Roots, and Waters; or applying the same to Practice, to minister to any outward Sore, Wound, Imposthumation, outward Swelling or Disease, any Herbs, Ointments, Baths and Plaisters, according to their Skill; and also Drinks for the Stone and Strangury, or Agues, without incurring any Pain by the said Statute of 3 H. 8. c. 11. Stat. 34 & 35 H. 8. c. 8.

**Any Person may apply Remedies to outward Sores, Or give Physick for the Stone, Strangury, or Agues.**

**1 Mar. c. 9. Jaylor to receive Prisoners committed by the College.**

The aforesaid Act of 14 H. 8. c. 5. for incorporating the Physicians of London, is confirmed: And it is enacted, That whoever shall be committed to Prison by the President of the said Corporation, or such as shall be elected yearly, for the Correction of Offenders, to any Prison within the said City or Precinct, except the Tower of London, the Keeper of such Prisons shall receive in Custody such Offenders as shall be so committed, without Bail or Mainprize, until such Offender shall be discharged by the President, and such Persons as shall by the said College

College be thereunto authorized, upon Pain that such Keeper shall forfeit double the Fine that such Offender shall be assessed to pay, so that the said Fine do not at any one Time exceed the Sum of Twenty Pounds, one Moiety whereof shall go the Crown, and the other to the said President and College. *Stat. 1 Mar. c. 9.*

And if the Warden of the Grocers (that is of the Apothecary's Company) shall neglect to go with the President, or four Physicians elected, according to the said Statute of 32 H. 8. to search for faulty Drugs when required so to do, that then the said Physicians may search out the Warden and punish the said Apothecaries for any faulty Drugs without the Assistance of the said Wardens: And every Person who shall resist such Search, shall forfeit ten Pounds: And all Justices of Peace, Mayors, Sheriffs, Bailiffs, and Constables, and other Officers within the said City and Precincts, are required to assist the said President and College, and all Persons authorized by them, to put the abovesaid Statutes in Execution, upon Pain of incurring a Contempt. *Ib.*

The abovesaid Acts of 14 H. 8. with the Patent for Incorporating the Physicians of London, the 32 H. 8. c. 42. Former Acts, and 1 Mar. c. 9. being recited, it is enacted, That the four Persons chosen annually by the President and Fellows of the College of Physicians, which four are now commonly call'd Censors, or any three of them, calling to the Assistance the Wardens of the Apothecaries of London, or one of them, when, and as often as such Censors shall think fit, in the Day-time, shall have Power to enter the House, Shop, Cellar, Vault, Work-house, Ware-house, or any other Room, of any Apothecary or other Person, who shall keep for Sale, or sell, any Medicines, Drugs, Waters, Oils, or Compositions, to be used for Medicines within the said City, and seven Miles thereof, and then and there to examine the said Medicines, Drugs, &c. And all such as the said Censors shall judge to be defective, corrupted, or decay'd, and not meet to be used in Medicine, they shall take and burn, or otherwise destroy, except all Drugs in the Houses or Ware-houses of Merchants, Importers, or Druggists, not making or keeping Medicines for Sale. *Stat. 10 Geo. c. 20.*

Except the  
Drugs of Mer-  
chants and  
Druggists

And if the Wardens of the Apothecaries shall refuse or neglect going with the said Censors, to make such Search as aforesaid, that then the said Censors, or any three of them, shall have Power to search and examine such Medicines, Drugs, &c. and destroy those that are faulty. *Ib.*



Apothecary  
may appeal  
to the Col-  
lege.

Provided, that if the said Censors shall judge any Medicines, Drugs, &c. to be faulty, and the Person in whose Custody they are found, shall, before the destroying thereof, appeal to the President and Fellows of the said College, by Writing under his Hand, then the said Censors shall cause such Medicines, Drugs, &c. and the Vessels in which they are contained, with the Reasons for condemning thereof, subscribed by the Censors, to be put in a Box and sealed up with the Seals of three of the said Censors, and of the Owner of the said Drugs, if he thinks fit; which Box shall be carried to the College of Physicians, and there kept until the next Assembly of the President and Fellows, which Assembly the Censors shall procure to be summoned within fourteen Days after every such Box shall be so sealed up: And before any of the said Medicines may decay, and Notice in Writing shall be given or left for the Owner of them, two Days before the Assembly; and the President, Vice-President, and Fellows so assembled, not being less than twelve, exclusive of the Censors who condemned the Medicines, shall open the said Box in the Presence of the Owner, if he appears; and if not, then without, and shall examine and finally determine concerning such Medicines, Drugs, &c. And if the major Part of them shall confirm the Judgment of the Censors, then the said Censors shall cause all such Medicines, Drugs, &c. so condemned, and the Vessels containing them, to be burnt or destroy'd before the Owners Doors, in such Manner as they shall think fit; but if the said President, Vice-President, and Fellows, shall not within fourteen Days after such Appeal, confirm the Judgment of the Censors, then, after Examination of the said Medicines, Drugs, &c. so sealed up, or so much thereof as shall remain unwaisted in the Examination, with the Vessels containing them, shall be returned to the House, Shop, &c. where the same were found. *Ib.*

Pain of 10 l.  
for refusing  
Search.

And every Apothecary, or other Person, resisting or obstructing such Search, or Examination, shall forfeit to the said College the Sum of 10 l. to be recovered by Action of Debt, Bill, Plaint, or Information, in the Name of the President, in any of the Courts at *Westminster*, with Costs: And Persons prosecuted for putting the Powers in this Act in Execution, may plead the general Issue, and give this Act and the special Matter in Evidence. *Ib.*

Patentees not  
prejudiced.

Provided, that this Act shall not extend to Prejudice the Right or Interest granted to any Person by Letters-Patents now in Force, for the sole making and vending any

any Medicine; or to impower the said President and Censors to inspect the Matter or Composition of any such Medicines, or to destroy them, during the Continuance of such Letters-Parents. *Ib.*

And every Person who shall hereafter be censured or adjudged by the Censors, or be condemned by them to pay demned by any Fine, suffer Imprisonment, or undergo any other the Censors Punishment for any Offence, in not well executing, for not right-practising or using that Faculty, may within fourteen ly admini-Days after Notice thereof, appeal from such Judgment or string Phy-Condemnation, to the President and Fellows of the said sick, may ap-College, by Writing under his Hand, delivered to the peal to the President, Vice-President, or any of the Censors, and College. such Appeal shall suspend the Judgment and Condemnation, and shall be heard at the said College, at an As-sembly of the President, or Vice-President, and Fellows, not being less in Number than twelve, exclusive of the Censors, from whose Judgment such Appeal was made, Notice having been given to the Person so appealing: Whose Deter-And the Judgment of the College, so assembled, or the mination shall major Part of them, shall be final, and the Judgment be final. appealed from shall be of no Force, further or otherwise than as it shall be affirmed or approved in all, or in part, by such final Judgment. *Ib.*

And the said several Acts herein before recited, and also this present Act, shall be deemed publick Acts; and this present Act shall continue in Force for three Years. *Ib.*

READINGS.

In the 7th Year of King James I. *Thomas Bon-* Dr. Bonham's  
*ham*, Doctor of Physick, brought an Action of false Case.  
Imprisonment, against *Henry Atkins*, *George Tur-* Action of false  
*ner*, *Thomas Moundford*, and *John Argent*, Do- Imprison-  
ctors of Physick, and Censors of the College, and ment against  
*John Taylor*, and *William Bowden* their Servants, the Censors.  
for that they imprisoned the Plaintiff in the Coun-  
ter, and detained him there for seven Days: The  
Defendants pleaded the Letters Patents of 10 Their plea.  
*Henry VIII*, and confirmed by the said Statutes of  
14 H. 8. and 1 Mar. and set forth, That the said  
*Thomas Bonham*, on the 10th of April 1606, con-  
trary to the Form of the said Letters-Patents and  
Acts of Parliament, within London, Exercebat

## PHYSICIANS and SURGEONS.

*Artem Medicina non admissus per literas Presidentis & Collegii Sigillo eorum communi sigillat ubi revera pd. Thomas Bonham fuit minus Sufficiens ad Artem Medicina exercend, &c.* Whereupon the said *Thomas Bonham* was summoned by the Censors or Governors of the College, to appear before the President and Censors, or Governors of the College aforesaid, on the 14th of *April* following, to be examined in the Premises, at which Day the said *Thomas Bonham* came before the President and Censors, and was examined by the Censors concerning his Skill in Physick; and because the said *Thomas Bonham* appeared unskilful in Medicine; and for that the said *Thomas Bonham* had been before prohibited by the said President and Censors, for the Causes aforesaid, to administer Physick, and had for one Month and more after such Prohibition, practised without Licence, &c. he was for his Disobedience and Contempt aforesaid, amerced the Sum of 5 *l.* to be paid to the said College, &c. and required to abstain from practising until he should be found sufficient, on Pain of Imprisonment,

Pain of 5 *l.*  
inflict-d for  
practising a  
Month with-  
out Licence.

Condemned  
to pay ano-  
ther 10 *l.* and  
to be impris-  
oned for pra-  
ctising, and  
refusing to  
appear before  
them.

That the said *Thomas Bonham*, the 30th of *October* 1606, practised Physick in *London*, and the same Day was summoned by the Censors to appear before the President and themselves, the 20th of *October* then next following; at which Day the said *Bonham* made Default, whereupon the aforesaid Censors adjudged, That he should pay a Fine of Ten Pounds, and be committed to Custody; and afterwards, viz. the 7th of *October* 1606, the said *Thomas Bonham* came before the President and Censors, and being demanded if he would make Satisfaction to the College for his Disobedience and Contempt, and submit himself to be examined, and obey the Censure of the College, he replied, That he had practised, and would practise Physick in *London*, without asking Leave of the College; nor would he submit himself to the President and Censors, affirming, That they had no Authority over those who were Doctors in the Universities.

Whereupon



Whereupon the four Censors, namely Dr. *Tur-* And commit-  
ner, Dr. *Mounford*, Dr. *Argent*, and Dr. *Dun*, for ted to Prison  
the Offences and Contempt aforesaid, ordered and accordingly.  
decreed, That the said *Thomas Bonham* should be  
committed to Prison, there to remain until he  
should be discharged by the President and Censors,  
or Governors of the College aforesaid, and that  
by Warrant under the common Seal, he was com-  
mitted accordingly to the Prison of the County.

In this Case there were three principal Points The Points in  
debated, I. Whether a Doctor of Physick, of ei- Debate.  
ther University, was by the said Letters-Patents,  
and the Body of the Act of 14 H. 8. restrained to  
practise Physick within the City of *London*. II. Whe-  
ther such a Doctor be not comprehended in the Ex-  
ception in the 14th of H. 8. And III. Whether  
the Imprisonment of the Plaintiff for his Dis-  
obedience, was lawful.

This Case having been often argued by the Ser-  
jeants at the Bar, and now by the Justices, Mr. Ju-  
stice *Daniel* held, That a Doctor of Physick, of  
either University, was not included in the Body  
of the Act of 14 H. 8. and if he was, yet he was  
excepted by the last Clause. Mr. Justice *Warburton*  
argued to the contrary, as to both these Points,  
but the Chief Justice did not speak to either of  
them, because that he and Mr. Justice *Warburton*  
and *Daniel*, all agreed, That the Action was main-  
tainable on another Account, namely, Because the  
Censors had no Power to commit the Plaintiff for  
any of the Causes above pleaded.

And the Reason thereof was, That the Cause, The Clause  
which gives Power to the Censors to fine and im- giving the  
prison, does not extend to that Clause, which pro- College Pow-  
hibits every one to practise Physick in *London* with- er to fine and  
out the Licence of the President and College, but imprison,  
extends only to punish those who administer Phy- does not ex-  
sick ill, or unskilfully in the said City; so that the tend to the  
Censors had no Power by the Letters-Patents and bare practi-  
the Act, to fine and imprison any Person barely sifing of Phy-  
for practising Physick in *London*. It was held also, sick, but to  
That the Censors could not be Judges, Ministers, the undue ad-  
and Parties in their own Cause. And lastly, That ministring of  
the it.

Nor had the  
Censors pur-  
sued the Act.

the Doctor could not incur the Pain of 5 *l.* 2 Month, and also be punished otherways at their Pleasure; for then he might be punished twice for the same Offence; but admitting, That the Censors had Power, yet it was resolved that they had not pursued their Authority, for the Censors alone have Power to impose the Fine by the Act; and here the President and Censors imposed the Fine of 5 *l.* Also the Plaintiff was summoned to appear before the President and Censors, and for not appearing was fined 10 *l.* whereas the President had no Authority in this Case. 3dly, That the Fines thus imposed, did not belong to them but the King, and yet they had decreed the Fine to be paid to themselves, and had imprisoned the Plaintiff for Non-payment of it. 4thly, They ought to have imprisoned the Plaintiff presently, no Time being limited by the Act. 5thly, That their Proceedings ought not to be by Parol, as they claimed an Authority to Imprison. 6thly, Altho' the Act of 14 *H.* 8. had given them a Power to imprison Offenders, till they should be delivered by the President and Censors, or their Successors, yet such Acts are to be taken strictly, and they could not imprison any but such as had offended against some Branch of the Statute; and it did not appear that the Plaintiff *Bonham* had offended against any one Clause, and upon the whole, Judgment was given for the Plaintiff. *Ib.*

Dr. *Bonham's*  
Case. 8 Co. 107  
Judgment  
therefore for  
the Plaintiff.  
Sir *Edward*  
*Coke's* Advice  
to the College.

Sir *Edward Coke* has left the following Directions to the College of Physicians, in the Conclusion of this Case of Dr. *Bonham's*: 1. That none can be punished barely for practising Physick in *London*, but by the said Pain of 5 *l.* a Month, which ought to be recovered by common Law. 2. That if any one practises Physick there for less than a Month, he incurs no Forfeiture at all. 4. If any Person offend in not rightly administering of Physick, he may be punished within the Month. 3. That those who are committed to Prison by the Statute, ought to be committed presently. 5. That the Fine assessed belongs to the King. 6. That they can neither impose a Fine, nor commit any Person, without

out making a Record of it. 7. That the Cause for which they inflict a Fine or Imprisonment, ought to be certain, because that is traversible in *B R. Ib.*

Debt was brought upon the Statute of 14 *H. 8.* Debt brought  
c. 5. by Dr. *Laughton*, President of the College of by the Presi-  
Physicians, Plaintiff, against — *Gardiner*, De- dent for pra-  
fendant, for that the Defendant used the Art of ctising Phy-  
Physick in *London*, without Licence from the Col- sick without  
lege there, against the Statute, and their Charter, Licence.  
for which he demanded 5 *l.* for every Month, be-  
ing the Penalty given by the Statute. The De-  
fendant pleaded the Statute of 34 *H. 8.* which en-  
ables every one to practise Physick or Surgery, be-  
ing skilful therein, notwithstanding any Act to the  
contrary. The Plaintiff replies, and shews the  
Statute *primo Mar. c. 9.* which confirms their  
Charter, and every Article thereof to stand in  
Force, any Act, Statute, Law, or Custom to the  
contrary notwithstanding. Hereupon the Defen-  
dant demurred, First, because this general Clause  
in this Law doth not restrain the Statute of 34 *H. 8.*  
2dly, That this Pleading is a Departure, for it  
ought to have been shewn before. *Stephens* argued  
for the Plaintiff, First, That the Act of 34 *H. 8.* is  
repealed by the Statute of *primo Mar. quoad*, the  
Colledge of Physicians in *London*, as fully as if it  
had been by exprefs Words recited and repealed;  
for when it confirms the Charter of 14 *H. 8.* and  
appoints, That it, and every Part thereof, shall  
stand and be available, the Statute of 34 *H. 8.* can-  
not stand with it. *Quia leges posteriores leges priores*  
*contrarias abrogant*, 4 *Ed. 4. Porter's Case. Co. 1. fol.*  
25 *b.* 2dly, That it is not any Departure, because  
there is not any new Matter, but Matter pleaded in  
reviving of the former, or Fortification thereof, and  
a Record was shewn, *Mich. 10 & 11 Eliz.* be-  
twixt *Bomelins* and — where the Record was  
in the same Manner as this Record is, and there  
the Plaintiff had Judgment. Wherefore, &c. And  
there being none on the Defendant's Part to argue,  
the Court, upon hearing of the Record, gave Rule,  
That Judgment should be entred for the Plaintiff, Judgment for  
unless, &c. Doctor *Laughton* and *Gardiner*. Cro. the President.  
*Jac. 121.* The



Another  
Action, a-  
gainst a French  
Refugee, for  
practising.  
Who pleads  
the Letters-  
Patents of  
Car. 2. gran-  
ting them the  
Privilege to  
practise.

Judgment for  
the Defen-  
dant, on a  
Flaw in the  
Nar.

Action against  
an Apotheca-  
ry, for taking  
upon him to  
practise and  
administer  
Physick, with-  
out the Ad-  
vice of a  
Doctor.

The College of Physicians brought an Action of Debt, upon the Statute of 14 H. 8. c. 5. against *Bush*, for the Penalty of 5 l. a Month, for practising Physick in *Westminster*.

The Defendant pleaded Letters-Patents of King *Charles II.* by which free Liberty is given to French Protestants to exercise the Faculty of Physick in *London* and *Westminster*, &c. and that he was a French Protestant, &c.

Upon a Demurrer the Plea was held ill, but then an Exception was taken to the Declaration, which set forth, That the Defendant practised Physick in *Westminster*; and doth not say, that it was within seven Miles of *London*, for which Reason the Defendant had Judgment the College of Physicians and *Bush*. Trin. 3 *Gulielmi*, Rot. 717. 4 *Mod.* 47.

In an Action for practising Physick within seven Miles of *London*, without Licence, the Case, upon a Special Verdict, was thus: The Defendant, being an Apothecary by Trade, was sent to by *J. S.* then sick of a certain Distemper, and he having seen, and being informed of the said Distemper, did, without Prescription or Advice of a Doctor, and without any Fee for Advice, compound and send the said *J. S.* several Parcels of Physick, as proper for his said Distemper, only taking the Price of his Drugs; and if this were a practising Physick, such as is prohibited by the Statute, was the Question: and after several Arguments, the Court at last unanimously agreed, That practising of Physick within this Statute consists,

1. In judging of the Disease, and its Nature, Constitution of the Patient, and many other Circumstances.

2. In judging of the fittest and properest Remedy for the Disease. And

3. Indirecting or ordering the Application of the Remedy to the diseased; and that the proper Business of an Apothecary is, to make and compound, or prepare the Prescriptions of the Doctor, pursuant to his Directions.

Secondly,

Secondly, It was agreed, That the Defendant's taking upon himself to send Physick to a Patient, as proper for his Distemper, without taking ought for his Pains, is plainly a taking upon himself to judge of the Disease and Fitness of the Remedy, as also the executive, or directing Part. *Et per tot. the Physicians, Car. the Plaintiff had Judgment.*

*Note,* This Judgment was reversed in the House of Lords. *College of Physicians. and Rose 6. Mod. 44. 2 Salk. 451.* but reversed in the House of Lords.

It has been antiently holden, as Mr. *Hawkins* observes, That if a Person not duly authorized to be a Physician or Surgeon, undertakes a Cure, and the Patient dies under his Hands, he is guilty of Felony, but those Books being written before the 23 *H. 8.* that took away Clergy from wilful Murder, he thinks such Manslayers are not excluded from the Benefit of their Clergy. 1 *Hawkins* 87. One guilty of Felony, who kills a Man by Physick, if he have no Authority to practise.

## Plague.

**T**HE Mayors, Bailiffs, head Officers, and Justices of Peace, of every City, Borough, Town Corporate, and privileged Place, where such Officers are, or any two of them, are empowered from Time to Time, to tax and assess all Inhabitants, Houses of Habitation, Lands, Tenements and Hereditaments, within their respective Precincts, for the seasonable Relief of Persons infected with the Plague, or inhabiting in Houses or Places infected, and to levy such Taxes on the Goods of every Person refusing to pay the same Rates, by Warrant under the Hands and Seals of such Mayor, Bailiffs, and head Officers, or of two such Justices of Peace as aforesaid, to be directed to any Person for the Execution thereof. *Sat. 1 Jac. c. 31.* 1 *Jac. c. 31.* Head Officers, and Justices of Peace in Corporations, to make a Rate for infected Persons.

And where no Goods shall be found, and the Party Pain of not taxed shall refuse to pay the Tax, the said Mayor, head Officers, or two Justices of Peace, may commit the Party to Prison until Payment made. *Ib.*

And if the Inhabitants of any City, Corporation, or privileged Place, shall be unable to relieve their said infected Poor, then upon Certificate thereof by the Mayor, Bailiffs, head Officers, and Justices of Peace, or any two of them, to the Justices of Peace of the County, near the

Inhabitants within five Miles of the Place infected, taxed towards their Relief.

Two Justices to make the Rate in a County at large.

Rates certified to the Quarter-Sessions, who may extend or abridge them. Pain of Constable not doing his Duty. Infected Persons compelled to keep in their Houses.

Felony to go abroad with a Plague Sore.

No Corruption of Blood incurred.

Searchers, &c. appointed.

the said City, &c. so infected, the said Justices of Peace of such County, or any two of them, shall tax the Inhabitants of the County within five Miles of the Places infected, with such Weekly Rates as they shall think fit to be levied, by Warrant from any such two Justices of Peace, by Sale of Goods; and in Default thereof, by Imprisonment of the Party. And if any such Infection shall be in any Borough, Town Corporate, privileged Place, Village or Hamlet, where there are no Justices of Peace, then any two Justices of Peace of the County may tax the Inhabitants within five Miles of the Place infected, with such Rates as they shall think fit, to be levied as aforesaid, and disposed of as they shall direct, in such Manner as Mayors, Bailiffs, head Officers, or any two Justices of Peace in any Corporation may do. *Ib.*

All which Taxes and Rates shall be certified to the respective Quarter-Sessions, where, if the Court think fit, they shall be continued, enlarged, or extended, to any other Parts of the County, or otherwise determined, as they shall think fit; and every Constable and other Officer, making Default in leying such Monies, upon such Warrants as aforesaid, shall forfeit 10 s. to be applied to the charitable Uses aforesaid. *Ib.*

And if any Person infected, or being in a House infected, shall be by the Mayor, Bailiffs, Constables, or other head Officers, of any City, Borough, Town Corporate, privileged Place, or Market-Town, or by any Justice of Peace, Constable, Headborough, or other Officer in a County at large, commanded to keep House for avoiding further Infection, and shall contemptuously disobey such Command, offering and attempting to break out and go abroad, and to resist, or going abroad and resisting the Watchmen appointed to keep him in, it shall be lawful for such Watchmen, with Violence to enforce him to keep his Houses; and if any Hurt ensue, the said Watchmen and their Assistants, shall be indemnified; and if such infected Person shall, contrary to such Command, contemptuously go abroad and converse in Company, having an Infectious Sore upon him uncured, he shall be adjudged a Felon; but if he shall have no Sore upon him, he shall be punished as a Vagabond. *Ib.*

Provided, that no Attainder of Felony by this Act, shall work any Corruption of Blood, or Forfeiture of any Goods or Lands. *Ib.*

And Justices of Peace and head Officers, may, within their respective Limits, appoint Searchers, Watchmen, Examiners, and Buriers, in Places infected, and administer Oaths to them for the Performance of their respective

due



ative Offices, and give them such other Directions as they shall think fit. *Ib.*

Provided, that the Universities of *Oxford* and *Cambridge*, and all Cathedral Churches, and the Colleges of *Eaton* and *Winchester*, within their respective Limits, shall have Power to put this Act in Execution; and no Justice of Peace or head Officer, shall intermeddle within their respective Jurisdictions. *Ib.*

Some Places in the *Baltick*, being infected with the Plague, an Act was made for obliging Ships coming from infected Places to perform their Quarantine.

*Marseilles* being infected, an Act was made, with further Provisions for preventing Infection, and the above-said Act of the 9th *Ann.* repealed. 7 *Geo. c. 3.*

By this Act, any Person suspected to be infected might be taken out of his House, and sent on Board a Ship, or to such other Lazaret as should be provided by the Government. 7 *Geo. c. 3.*

And if any Town happened to be infected, a Line or Trench might be thrown up round about it, to prevent the Inhabitants escaping to some other Place; and Persons endeavouring to escape, might be resisted by any kind of Violence; and if they happened to get out, they were declared Felons without Benefit of Clergy. *Ib.*

An Act was made to repeal the said Clauses in the last mentioned Act for taking People out of their Houses, and making Lines about infected Places; and some other Provision was made for preventing Infection, and it was declared, That the said Act should continue in Force no longer than the 25th of *March* 1723: and this present Act also was to expire at the same Time. *Stat. 8. Geo. c. 10.*

No Mayors or Justices to intermeddle in the Universities, &c.

9 *Anna c. 2.*  
Act for performing Quarantine.

7 *Geo. c. 3.*  
The last Act repealed.

Persons infected to be taken out of their Houses, and put on Ship-board.

Lines to be thrown up against infected Places.

8 *Geo. c. 10.*  
The above-said Clauses repealed.

The two last Acts expired.

*The End of the Fourth Volume.*





